

Jonathan D. Selbin (SBN 170222)
 Kristen E. Law (SBN 222249)
 LIEFF, CABRASER, HEIMANN & BERNSTEIN LLP
 275 Battery Street, 30th Floor
 San Francisco, California 94111-3336
 Telephone: (415) 956-1000
 Facsimile: (415) 956-1008

David P. Meyer (Ohio Bar No. 0065205) admitted *pro hac vice*
 Patrick G Warner (Ohio Bar No. 0064604) admitted *pro hac vice*
 Matthew R. Wilson (Ohio Bar No. 0072925) admitted *pro hac vice*
 DAVID P. MEYER & ASSOCIATES CO., LPA
 1320 Dublin Road, Suite 100
 Columbus, Ohio 43215
 Telephone: (614) 224-6000
 Facsimile: (614) 224-6066

ADDITIONAL COUNSEL ON SIGNATURE PAGE

Attorneys for plaintiff Harry Oestreicher and the putative Class

UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF CALIFORNIA

HARRY OESTREICHER, on behalf of
 himself and all others similarly situated,

Plaintiff,

v.

ALIENWARE CORPORATION and DOES
 1-100, inclusive,

Defendants.

) Case No. 3:07-CV-00512-MHP

) **SECOND AMENDED COMPLAINT**

) **CLASS ACTION**

) **(1) CONSUMER LEGAL REMEDIES**
) **ACT;**

) **(2) BUSINESS & PROFESSIONS CODE**
) **SECTIONS 17200 & 17500**

) **(3) FRAUDULENT CONCEALMENT/**
) **NONDISCLOSURE; and**

) **(4) UNJUST ENRICHMENT**

) **DEMAND FOR JURY TRIAL**

1 the Affected Computers, and failed to remove the Affected Computers from the marketplace or take
2 adequate remedial action. Rather, Alienware sold and serviced the Affected Computers even though it
3 knew, or was reckless in not knowing, that the Affected Computers were defectively designed, would
4 prematurely fail and would ultimately result in Plaintiff's and Class members' inability to use their
5 Affected Computers for their intended purpose and during the time in which consumers, including
6 Plaintiff, reasonably expected they would have use of the Affected Computers

7 10. Plaintiff is informed and believes that Alienware restricted the access of third party repair
8 centers to its parts so that it would obtain additional profits from repairs necessitated by the Defects.

9 11. As a consequence of Alienware's knowing and fraudulent concealment of the Defects,
10 Plaintiff and the Class purchased and currently own defective computers and have incurred actual
11 damages.

12 **THE PARTIES**

13 12. Representative Plaintiff Harry Oestreicher is a resident of San Francisco, California. On
14 or about June 30, 2005, Plaintiff Oestreicher purchased a new Alienware Area-51 model m7700 laptop
15 computer online from www.alienware.com for \$4,050.00 plus \$99.00 shipping.

16 13. Defendant Alienware Corp. ("Alienware") manufactures high-performance desktop,
17 notebook, media center, and professional computer systems. Alienware is headquartered at 14591 SW
18 120 Street, Miami, Florida 33186-8638.

19 14. The true names and capacities, whether individual, corporate, associate, representative or
20 otherwise, of the defendants identified herein as Does 1 - 100 inclusive are unknown to Plaintiff, who
21 therefore sues these defendants by said fictitious names. Plaintiff will amend this complaint to allege
22 the true names and capacities of Does 1 - 100 when they have been ascertained. Does 1 -100 are in
23 some manner legally responsible for the wrongs and injuries alleged in this complaint and all allegations
24 against Alienware are alleged against Does 1 - 100.

25 15. Each of the Defendants acted as the co-conspirator, agent, joint venturer or alter-ego with
26 respect to all acts, violations, and common course of conduct alleged herein, or is otherwise liable.
27
28

1 16. The acts alleged in this Complaint have been committed by Defendant(s) and were
2 authorized, ordered or done by their officers, agents, employees or representatives while actively
3 engaged in the management of the Alienware's businesses.

4 **JURISDICTION**

5 17. This Court has original jurisdiction over this action under the Class Action Fairness Act,
6 28 U.S.C. § 1332(d), because this is a class action in which: (1) there are 100 or more members in the
7 Plaintiff's proposed class; (2) at least some members of the proposed class have a different citizenship
8 from Alienware; and (3) the claims of the proposed class members exceed \$5,000,000 in the aggregate.

9 18. This court has personal jurisdiction over Alienware because Alienware has purposefully
10 availed itself of the privilege of conducting business activities within the State of California by
11 manufacturing, warranting, advertising and selling computers to Plaintiff and the Class members and,
12 further, generally maintained systematic and continuous business contacts with the State of California.

13 **VENUE**

14 19. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(a) because a substantial part
15 of the events or omissions giving rise to Plaintiff's claims occurred in the Northern District when
16 Alienware sold, marketed, distributed and/or warranted—and Plaintiff purchased—one or more of the
17 computers at issue here.

18 **APPLICATION OF CALIFORNIA LAW**

19 20. California law applies to the claims and issues asserted herein. Plaintiff, who is a
20 California resident, seeks damages and equitable relief on behalf of himself and all other California
21 residents similarly situated, under the laws of the State of California.

22 21. California has significant contacts and/or a significant aggregation of contacts to the
23 claims asserted by Plaintiff and all Class members.

24 22. California has a materially greater interest than any other State in enforcing the rights and
25 remedies granted to California consumers under the California laws invoked in this Complaint. These
26 rights and remedies further strong fundamental public policies of the State of California.
27
28

FACTUAL ALLEGATIONS

23. Founded in 1996 by Nelson Gonzalez and Alex Aguila, Alienware manufactures and sells high-performance desktop and laptop computers. Alienware claims to have earned an unparalleled reputation by creating best-of-breed products that offer superb, uncompromising quality.

24. Alienware notebook computers (including the Affected Computers) are targeted to customers who require high-performance computer systems and who are willing to pay a premium for this type of machine. Alienware aims to reach video game enthusiasts (or “gamers”) in particular, frequently advertising in PC Gamer magazine¹ and promising that “[p]ower hungry gamers and enthusiasts alike will benefit from the Area-51 m7700’s removable video card modules featuring the new NVIDIA GE Force Go 6800, today’s fastest mobile graphic card.”² As Alienware’s website boasted in 2004:

Take it from a company built by gamers, we have the expertise to help you configure an awesome Gaming PC that will elevate your gaming experience...Our Gaming PC’s feature cutting-edge technology and are optimized for performance and designed to deliver ultra-smooth gameplay at maximum resolutions. Finally, you can take advantage of the latest game technology; the colors, pixel shaders, shadow detail, and filters which bring game worlds to life!³

25. Typical customers of the Affected Computers are individuals or small-to-medium sized businesses that require optimum performance and are willing to pay a premium to obtain it.

26. Alienware offers three lines of notebook computers: the Area-51, Aurora, and Sentia. The Affected Computers fall within the Area-51 line.

27. Plaintiff is informed and believes that Alienware began marketing and selling the Affected Computers at issue in this case starting with the m7700 in November 2004, that Alienware

¹ See e.g. sample advertisements attached as Exhibit 1.

² November 8, 2004 Press Release, attached as Exhibit 2.

1 introduced the m5500 model in or around March 2005, introduced the m5700 model in or around
2 October 2005, and introduced the m5550, m5750, and Superman Returns models in or around July
3 2006.

4 28. The Affected Computers fail to perform as reasonable consumers would expect in that
5 the heat management system is inadequate as a result of the Defects. As a result, the Affected
6 Computers are prone to premature failure as a result of overheating, particularly (but not solely) when
7 used for the very high-performance functions for which they were marketed and sold and for which they
8 commanded a premium price. When the Affected Computers overheat, they randomly and unexpectedly
9 slow down, shut down, fail to power up properly, or fail to function at all, leaving the computers
10 unusable.

11 29. Alienware failed to adequately design, manufacture, and/or test the Affected Computers
12 to ensure that they were free from the Defects.

13 30. Plaintiff Oestreicher purchased a new Alienware Area-51 model m7700 laptop computer
14 online from www.alienware.com for \$4,050.00 plus \$99.00 shipping on or about June 30, 2005.
15 Oestreicher purchased the Area-51 model m7700 because he wanted a high-performance machine to run
16 high-end graphics programs, digital audio, and the like. Oestreicher chose the Area-51 model m7700
17 because he wanted the “best of the best.” Oestreicher expected the Area-51 model m7700 to perform
18 better and last longer than a less expensive computer.
19

20 31. Oestreicher’s computer came with a 90-day warranty at no charge beyond the purchase
21 price. Extended warranties of 6 months, 1 year, or 2 years were available for an additional charge.
22 Oestreicher selected the standard 90-day warranty. Notwithstanding the short warranty period, Plaintiff
23 Oestreicher reasonably expected that his new Alienware computer would function properly for at least
24 three to four years without the need for him to expend additional money to ensure it functioned
25 normally.
26
27
28

³ See Screenshot from Alienware’s website, attached as Exhibit 3, available online at
<http://web.archive.org/web/20040920082824/http://www.alienware.com/>

1 32. At all times relevant, Plaintiff Oestreicher has used his Area-51 m7700 in a foreseeable
2 manner and in the manner in which it was intended to be used. Indeed, Oestreicher was careful to make
3 sure that his Area-51 model m7700 was kept in optimal condition by using it on a flat desk in a cool
4 room as opposed to using it on his lap or bed.

5 33. In December 2005, Oestreicher's m7700 computer began overheating, eventually shut
6 down altogether, and has since never restarted. At that time, Oestreicher contacted Alienware in an
7 attempt to get his computer repaired. Alienware stated that it would attempt to troubleshoot the problem
8 for a charge, or assist over the phone for \$39 per phone call. Because he had already spent more than
9 \$4,000.00 to purchase the computer, and is himself a knowledgeable computer professional, Oestreicher
10 chose not to pay for additional services from Alienware.

11 34. Oestreicher contacted Alienware again in March of 2006, requesting that Alienware fix
12 the machine at no cost, which Alienware declined to do.

13 35. Oestreicher requested to purchase parts for the computer so that he could have it fixed by
14 a repair shop of his choosing, and was informed by Alienware that it does not allow outside parties to
15 purchase parts for their computers.
16

17 36. As a result, Oestreicher paid over \$4,000.00 for a purportedly premium, high-
18 performance computer that he reasonably expected would function properly for 3 to 4 years, and instead
19 received a defective computer that functioned for approximately six months. Alienware has refused to
20 repair the computer for free, has sought to charge Oestreicher to repair it, and has refused to even sell
21 him the required parts so he can have it repaired elsewhere.

22 37. Had Plaintiff Oestreicher known that his Area-51 model m7700 would overheat and fail
23 well before three years of use, he would not have purchased it or would have paid less for it.
24

25 **The Uniform Defects In The Affected Computers**

26 38. Computers generally, and laptops in particular, must have an efficient means for
27 transferring heat away from the active components of the machine to prevent overheating and failure.
28

1 The purpose of a heat removal system—or heatsink—is to gather heat from the central processing unit
2 and distribute it outside of the machine.

3 39. During the time the Affected Computers were sold, processing speed was a key feature
4 and marketing tool for laptop computers, and manufacturers touted, and competed with respect to, such
5 speed. As Alienware and its competitors raced to create faster and faster laptop computers, cooling
6 issues became increasingly important. This is so because, as a general matter, the faster a computer
7 processes data, the higher its internal temperature.

8 40. Essentially, there are three processes that should be considered when designing a
9 heatsink: thermal conductivity, thermal radiation, and thermal convection. The first is a measure of how
10 well a particular metal can absorb and transmit heat within itself. The second concerns how well a metal
11 performs in emitting forms of radiation - heat being one of them. The third is convection, which is how
12 well the heatsink transfers heat to another object, in this case outside air. Heatsinks must be designed in
13 such a way that air can easily and quickly float through the fan, and reach all cooling elements. The
14 heatsinks installed in the Affected Computers are not adequate to remove the heat produced by the
15 processor, battery and other components of these Affected Computers.
16

17 41. The heat removal system for a laptop computer is not unlike the radiator system in a
18 motor vehicle. In a vehicle, the engine generates heat as it runs. Heat from the engine is transferred to
19 the radiator via circulating fluid. The radiator is then cooled by moving air. In the Affected Computers
20 at issue here, heat is generated by the various processors and circuit boards installed in the computer.
21 These processors and circuit boards are equivalent to the car's engine in that they generate heat. Like
22 the engine, the working components of the Affected Computer will fail if they overheat.

23 42. Each Affected Computer is equipped with a heat removal system that includes three
24 related components: (1) copper rods intended to draw heat away from the heat-generating components
25 and transfer that heat to one or more sets of metals fins ; (2) the metal fins themselves; and (3) one or
26 more small fans designed to move air across the fins to disseminate the heat collected there. In the heat
27 removal system, the copper rods are equivalent to the fluid in an engine. The metal fins are equivalent
28

1 to the radiator. And the fans serve the same purpose—to move air—in both applications. Photographs
2 depicting the components described in this Paragraph are attached as Exhibit 4.

3 43. An expert examination of the Affected Computers reveals that their heat removal systems
4 are uniformly inadequate. To be effective, air must be able to circulate easily through the computer to
5 carry heat from the metal fins outside the machine. If the air flow is restricted for any reason, heat
6 cannot transfer efficiently, and the internal temperature of the computer increases—sometimes
7 dramatically. In the Affected Computers, air flow is restricted under normal and foreseeable use
8 conditions in two distinct ways. First, the air intake for the fan is positioned on the bottom of the
9 computer such that it will be completely blocked or severely restricted if the machine is resting on a
10 conformable surface, such as a person's lap, a sofa, or a bed. Photographs depicting the improper
11 placement of the fan are attached as Exhibit 5. Second, unbeknownst to the user, the internal metal fins
12 collect lint and other debris over time, severely blocking airflow through the fins and inhibiting heat
13 transfer. A photo depicting lint on the metal fin component of the heat removal system is attached as
14 Exhibit 6.

15 44. Alienware was well aware of the need for adequate cooling within the Affected
16 Computers, especially given Alienware's introduction of a faster—and hotter—processor in the m7700
17 in November 2004. Instead of developing a suitably robust heat removal system prior to the product
18 launch, Alienware passed the burden of the inadequate system to Plaintiff and Class Members and has
19 since denied the problem when confronted by unhappy customers. Subsequently released models
20 among the Affected Computers at issue here share the same inadequate and defectively designed heat
21 removal system as the m 7700.

22 45. As a result of the Defects, through normal use, the heat removal system becomes less
23 efficient due to blocked airflow, both at the air duct and through the accumulation of lint and debris in
24 the fins, ultimately causing the Affected Computers to fail.

25 46. The failure resulting from the Defects is evidenced by slowdown, unexpected shutdown,
26 and failure to boot.

27 47. These Defects are common to, and uniform in, the Affected Computers.
28

1 48. These Defects are substantially likely to prevent the Affected Computers from
2 functioning at all, much less providing the high-performance for which they were marketed and sold,
3 under normal use conditions and well before the end of their expected useful life.

4
5 49. These Defects render the Affected Computers unfit for the ordinary purpose for which
6 such goods are sold at the time that they were sold to Plaintiff and the other Class members.

7 50. These Defects have necessitated, and will continue to necessitate, costly repairs to the
8 Affected Computers.

9
10 **Alienware's Knowledge Regarding The Defects**

11 51. Before it sold the first unit, Alienware knew, or was reckless in not knowing, that the
12 cooling system in the Affected Computers was inadequate and would lead to premature failures,
13 especially when used for the high-performance functions for which it was sold.

14 52. Alienware also was made aware of the Defects through numerous consumer complaints.
15 Because of the Alienware's failure to resolve this widespread problem, consumers have taken to posting
16 their complaints on the internet. Excerpts from various websites are included in Paragraph 60, below.

17 53. Alienware is and has been aware of the scope of the problems with the Affected
18 Computers but has failed to take corrective action. Instead, Alienware has responded by denying
19 consumer complaints and has sought to "run out the clock" on the warranties that accompanied the
20 Affected Computers. Alienware has failed to even notify its customers of the problems or advise them
21 to have their Affected Computers inspected to repair the Defects.

22 54. At Alienware's recommendation, Class members incur out of pocket expenses to repair
23 or replace components or the Affected Computers as a whole when the symptoms of the Defects
24 manifest outside the Alienware warranty.

25 55. To this day, Alienware continues to conceal material information from Plaintiff, the
26 Class, and the public about the Defects in the Affected Computers.

27 **Plaintiff's And Class Members' Expectations and Experiences**
28

1 56. When he purchased his computer, Plaintiff Oestreicher reasonably expected his computer
2 to function properly for at least three to four years without the need to expend additional money to
3 obtain the expected useful life.

4 57. Reasonable consumers expect that laptop computers like the Affected Computers will
5 function properly for at least three to four years, and do not expect that they will come with an inherent
6 defect that results in failure well before that expected lifetime and requires out-of-pocket expenditure of
7 hundreds of dollars to obtain the expected useful life.

8 58. Because of the Defects, and as detailed in Paragraphs 30-37, above, Plaintiff
9 Oestreicher's computer failed well before the end of its expected useful life.

10 59. As a result of the Defects alleged herein, Plaintiff has experienced catastrophic failure of
11 his computer, did not get what he paid for, and incurred actual damages.

12 60. Plaintiff's experiences are by no means isolated or unique. Countless essentially
13 identical complaints with respect to these same Affected Computers can be found all over the internet.
14 The following messages are just a few verbatim excerpts from www.cnet.com, www.pcworld.com, and
15 www.notebookreview.com:
16

17 Alienware REFUSES to stand behind the hardware they sell. Their goal is
18 to get your money, and once that happens, they could care less about what
19 happens to their systems. I spent OVER \$4,000 one year ago for the best
20 system money could buy. I ended up getting an easy-bake oven that fails
21 every 3 months on average.⁴

22 * * *

23 The supervisor, Manuel, comes on after another 5 minutes on hold. I give
24 him an earful and then ask why the two parts are broken. The answer?
25 Heat. The computer basically cooked itself. I'm out almost another 1,000
26
27

28 ⁴ http://reviews.cnet.com/Alienware_Area_51m_7700/4864-3121_7-31456556.html?ctype=msgid&messageSiteID=7&messageID=1791788&cval=1791788&tag=uolst

dollars because the 3,000 dollar laptop I purchased runs too hot for its own box. Frustrated and helpless, I gave Manuel my credit card info...⁵

* * *

Our system overheated out of the box. We have returned it 3 times to be fixed. They either say that the problem was not duplicated within a small period of idle running time (no applications being attempted and probably in a refrigerated room) or they say that they have fixed it with no explanation of what was fixed. Frankly, the case has poor ventilation and the fans do not always work. This is not an isolated case, based on my internet researching of other reports. Our warranty states that they will fix the problem, but if they can't then they will replace it or refund our money. They refuse to acknowledge the problem, therefore they say there is nothing to fix.⁶

* * *

With the Area-51 M7700 they went too far in packing all this power into a small package. The...thing keeps overheating, and THAT ultimately breaks down the hardware.⁷

* * *

... the Alienware was overheating so bad and shutting down that the only way I could use it was to put a 10 lbs steel barbell weight under it. This would work for about 2 hours where I would have to swap the weight with a fresh one that I had sitting in the freezer.⁸

* * *

⁵ http://reviews.cnet.com/Alienware_Area_51m_7700/4864-3121_7-31456556.html?ctype=msgid&messageSiteID=7&messageID=2188938&cval=2188938&tag=uolst

⁶ http://reviews.cnet.com/Alienware_Area_51m_7700/4864-3121_7-31456556.html?ctype=msgid&messageSiteID=7&messageID=1961156&cval=1961156&tag=uolst

⁷ <http://forums.pcworld.com/forums/viewtopic.php?p=7868>

⁸ <http://forum.notebookreview.com/archive/index.php?t-44425.html>

Fraudulent Concealment Allegations

61. Plaintiff is a consumer who purchased his Affected Computer from Alienware's website. Absent discovery, Plaintiff is unaware of, and unable through reasonable investigation to obtain, the true names and identities of those individuals at Alienware responsible for engineering design and analysis, marketing and advertising, or sales of the Affected Computers. Alienware necessarily is in possession of all of this information.

62. Plaintiff's claims arise out of Alienware's fraudulent concealment of the Defects. To the extent that Plaintiff's claims arise from Alienware's fraudulent concealment, there is no one document or communication, and no one interaction, upon which Plaintiff bases his claims. He alleges that at all relevant times, including specifically at the time he purchased his Affected Computer, Alienware knew, or was reckless in not knowing, of the Defects; Alienware was under a duty to disclose the Defects based upon its exclusive knowledge of them, its affirmative representations about them, and its concealment of the Defects; and Alienware never disclosed the Defects to the Plaintiff or anyone at any time or place or in any manner.

63. Plaintiff makes the following specific fraud allegations with as much specificity as possible absent access to the information necessarily available only to Alienware:

a. **Who:** Alienware concealed the Defects from Plaintiff, the Class, and everyone in the chain of distribution. Plaintiff is unaware of, and therefore unable to identify, the true names and identities of those individuals at Alienware responsible for such decisions.

b. **What:** Alienware knew, or was reckless in not knowing, and concealed the fact that the heat removal systems in the Affected Computers are defective and prone to increasing inefficiency over time, resulting in premature failure of the Affected Computers.

c. **When:** Alienware concealed this material information at all times, starting no later than November 2004, continuing through the time of sale, and on an ongoing basis, and continuing to this day. Plaintiff is aware of no time at which Alienware disclosed this material information to anyone outside of Alienware.

d. **Where:** Alienware concealed this material information in every communication it had with Plaintiff, the Class, and everyone in the chain of distribution. Plaintiff is aware of no document, communication, or other place or thing, in which Alienware disclosed this material information to anyone outside of Alienware. Such information appears in no sales documents, no displays, no advertisements, no warranties, no owner's manual, nor on Alienware's website.

e. **How:** Alienware concealed this material information by not disclosing it to Plaintiff, the Class, or anyone in the chain of distribution at any time or place or in any manner, even though it knew this information and knew that it would be important to a reasonable consumer.

f. **Why:** Alienware concealed this material information for the purpose of inducing Plaintiff and Class members to purchase the Affected Computers and at full price, rather than purchasing competitors' computers or paying Alienware less for them. Had Alienware disclosed the truth, Plaintiff (and reasonable consumers) would not have bought the Affected Computers, or would have paid less for them.

Affirmative Statements Regarding Product Characteristics

64. Alienware made the following affirmative statements and partial representations about products within the Area-51 line of notebook computers:

Website

At various times since 2003, Alienware's website has included the following partial representations:

- Higher performance to do more in less time.
- *The Area-51m is a powerful machine which requires powerful cooling. All Area-51m systems come with a custom made heat sink specifically designed for high speed processors. Sticking with Alienware® tradition, each unit is packed full of fans and exhaust units to ensure optimum performance (emphasis added).*⁹

⁹ See Screenshot from Alienware's website, attached as Exhibit 7, available online at http://web.archive.org/web/20030801073619/www.alienware.com/system_pages/area-51m.aspx

- 1 • The Area-51m is equipped with a CPU cooling system featuring individual
2 exhaust vents, heat-sink and fan.
- 3 • Thanks to the enormous amount of performance provided by its components, the
4 Area-51m is a potent solution for personal Digital Video Editing. Perhaps the
5 most critical aspect of this application is the amount of processing power
6 available. Using the latest Pentium 4 processors with Hyper-Threading
7 technology, the Area-51m is able to handle even the most demanding
8 applications. The latest graphics technology is also utilized to ensure that there are
9 no performance bottlenecks when completing a project. Lastly, the ability to
10 equip the system with a phenomenal 2GB of PC3200 DDR memory gives users
11 the ability to have several projects or applications open at once without running
12 the risk of depleting system resources. Although you might not be a professional
13 video editor, you can be confident that you're using professional equipment.
- 14 • With m5550's battery control you can save battery by ramping down CPU, GPU
15 power and lowering the cooling system usage when you don't need it. Play
16 against the ropes so you have the juice to see your movie to its finale.
- 17 • Balancing high performance technology within a thin and light design, for users
18 that demand power and portability. [describing the Area-51 m5550]
- 19 • The ideal high-performance notebook focused on providing an elite multimedia
20 experience for all users. [describing the Area-51 m5750]
- 21 • New PCI-Express mobile with extreme performance. Featuring a full-speed
22 desktop processor in a mobile form-factor. [describing the Area-51 m7700]
- 23 • Considering the amount of performance the Area-51 m9750 pumps out, *a light*
24 *chassis that can manage thermals efficiently and has plenty of strength to protect*
25 *everything inside is essential.* Steel or plastic simply won't cut it. That's why the
26 Area-51 m9750 features magnesium alloy, which is 75% lighter than steel and
27
28

provides better rigidity than plastic to deliver the optimum solution (emphasis added).

Print Advertisements¹⁰

- Custom-built and optimized for high-performance PC gaming, Alienware systems deliver unrivaled performance with the highest-detail possible and ultra-smooth gameplay. Incorporating state-of-the-art components, innovative engineering and design, and providing unprecedented customer service, Alienware systems offer the ultimate gaming experience. Immerse yourself in a new level of realism, whether you are defeating evil enemies, building your own empire, or conquering new worlds online.

Press Releases¹¹

- Alienware m 7700 mobile desktop that delivers the power of a high-performance desktop in a conveniently portable platform.
- [Alienware's m 7700 offers] the perfect blend of desktop power and portability.
- [T]he Area 51 m 7700 provides travelers, gamers, college students, military personnel, and other mobile users the perfect way to enjoy all of their media wherever they need to go.
- With a Windows XP Media Center Edition 2005 powered Area-51 m 7700 mobile desktop, [Microsoft's and Alienware's] mutual customers can be assured of the seamless and innovative digital entertainment experiences regardless of their location.

65. While representations like "high-performance" and "the perfect blend of desktop power and portability" may sound like vague and highly subjective claims as opposed to specific, detailed factual assertions, such phrases do have a specific factual meaning in the context of the laptop computer market. If a seller promises desktop performance in a laptop application, the laptop must be able to

¹⁰ Copies of the excerpted advertisement is attached as Exhibit 8.

¹¹ Copies of the excerpted press releases are attached as Exhibit 2 and Exhibit 9.

1 perform the promised functions without overheating to the point of an uncommanded slow down, shut
2 down or failure.

3 4 **STATUTES OF LIMITATION**

5 66. **Discovery Rule** The causes of action alleged herein accrued upon discovery of the
6 defective nature of the Affected Computers. Because the defects are latent, and Alienware took steps to
7 actively conceal them, among other reasons, Plaintiff and members of the Class did not discover and
8 could not have discovered the defects through reasonable and diligent investigation. Moreover,
9 reasonable and diligent investigation into the cause of the failed computers did not and could not reveal
10 a factual basis for a cause of action based on Alienware's failure to disclose/concealment of the defects.

11 67. **Fraudulent Concealment Tolling** Any applicable statutes of limitation have been tolled
12 by Alienware's knowing and active concealment and denial of the facts as alleged herein, which
13 concealment is ongoing. Plaintiff and the Class have been kept ignorant by Alienware of vital
14 information essential to the pursuit of these claims, without any fault or lack of diligence on their part.
15 Plaintiff and members of the Class could not reasonably have discovered the true, latently defective
16 nature of the Affected Computers.

17 68. **Estoppel** Alienware was and is under a continuous duty to disclose to the Plaintiff and
18 the Class the true character, quality, and nature of the Affected Computers. Alienware knowingly,
19 affirmatively, and actively concealed the true character, quality, and nature of the Affected Computers,
20 which concealment is ongoing. Plaintiff reasonably relied upon Alienware's knowing, affirmative,
21 and/or active concealment. Based on the foregoing, Alienware is estopped from relying on any statutes
22 of limitation in defense of this action.
23

24 25 **ALIENWARE'S TERMS AND CONDITIONS**

26 69. Alienware purports to unilaterally apply Terms and Conditions to the sale of the Affected
27 Computers. These Terms and Conditions constitute a one-sided, exculpatory contract of adhesion which
28 operates to insulate Alienware from liability that otherwise would be imposed under California law.

70. Plaintiff denies that Alienware's Terms and Conditions are binding on him on grounds that he did not consent to the Terms and Conditions and/or the Terms and Conditions are not supported by adequate consideration and/or the Terms and Conditions are unconscionable.

71. The Terms and Conditions contain an arbitration clause with a class action waiver that is contrary to policy of law under California Civil Code section 1668 and unconscionable under California Civil Code section 1670.5, and thus unenforceable. The class action waiver is part of a scheme by Alienware, the party with superior bargaining power, to exempt itself from responsibility for its fraudulent or willfully injurious actions described herein.

CLASS ACTION ALLEGATIONS

72. Plaintiff brings this lawsuit as a class action on behalf of himself and all others similarly situated as members of a proposed plaintiff Class pursuant to Federal Rule of Civil Procedure 23. This action satisfies the ascertainability, numerosity, commonality, typicality, adequacy, predominance and superiority requirements of those provisions

73. The Class is defined as:

All persons and entities residing in the State of California who purchased, not for resale, one or more Affected Computers.

74. Excluded from the Class are (1) Alienware, any entity in which Alienware has a controlling interest, and its legal representatives, officers, directors, employees, assigns and successors; (2) the judge to whom this case is assigned and any member of the judge's immediate family; (3) persons or entities who distribute or resell the computers, and (4) claims for personal injury, wrongful death and/or emotional distress.

Numerosity & Ascertainability

75. On information and belief, the Class is comprised of thousands of owners of Affected Computers throughout California, making joinder impractical.

76. The Class is composed of an easily ascertainable, self-identifying set of individuals and entities who purchased Affected Computers. Discovery will reveal which, if any, other Alienware Area-

1 51 laptop computers share the same defective design as the Affected Computers, and the Class can be
2 defined to include such models by name at that time.

3 **Community of Interest**

4 77. There is a well-defined community of interest among the Class members, and the
5 disposition of their claims in a single action will provide substantial benefits to all parties and to the
6 Court.

7 **Typicality**

8 78. The claims of the representative Plaintiff are typical of the claims of the Class, in that the
9 representative Plaintiff, like all members of the Class, owns an Affected Computer that contains the
10 inherent Defects. The factual bases of Alienware's misconduct are common to all Class members and
11 represent a common thread of fraudulent misconduct resulting in injury to all members of the Class.
12

13 **Predominance of Common Issues**

14 79. There are numerous questions of law and fact common to all Class members, and those
15 questions predominate over any questions that may affect only individual Class members.

16 80. The predominant common questions include the following:

- 17 a. Whether the Affected Computers contain common design defects;
- 18 b. Whether the Affected Computers are substantially certain to prematurely
19 fail;
- 20 c. Whether the Affected Computers are not of merchantable quality;
- 21 d. Whether the existence of the Defects in the Affected Computers is a
22 material fact reasonable purchasers would have considered in deciding whether to purchase a computer;
- 23 e. Whether Alienware knew and/or was reckless in not knowing of the
24 Defects in the Affected Computers;
- 25 f. Whether Alienware fraudulently concealed from and/or failed to disclose
26 to Plaintiff and the Class the Defects in the Affected Computers;
- 27 g. Whether Alienware had a duty to Plaintiff and the Class to disclose the
28 Defects in the Affected Computers;

1 h. Whether Alienware's concealment of and/or failure to disclose the Defects
2 induced Plaintiff and the Class to act to their detriment by purchasing defective Affected Computers;

3 i. Whether Alienware represented, through its words and conduct, that the
4 Affected Computers had characteristics, uses or benefits that they did not actually have, in violation of
5 the Consumer Legal Remedies Act ("CLRA");

6 j. Whether Alienware represented, through its words and conduct, that the
7 Affected computers were of a particular standard, quality or grade when they were of another, in
8 violation of the CLRA;

9 k. Whether Alienware advertised the Affected Computers with the intent not
10 to sell them as advertised, in violation of the CLRA;

11 l. Whether Alienware's active concealment of and/or failure to disclose the
12 true nature of the Affected Computers was likely to mislead or deceive, and therefore fraudulent, within
13 the meaning of Bus. & Prof. Code § 17200, *et seq.*;

14 m. Whether Alienware's active concealment of and/or failure to disclose the
15 true nature of the Affected Computers is unfair within the meaning of Bus. & Prof. Code § 17200, *et*
16 *seq.*;

17 n. Whether Alienware's warranties, marketing, advertisements and other
18 express representations that the Affected Computers had certain characteristics and/or were of a certain
19 quality or standard violated Bus. & Prof. Code § 17500, *et seq.*;

20 o. Whether Alienware should be declared financially responsible for
21 notifying all Class members of the defective Affected Computers and for the costs and expenses of
22 repair and replacement of all such defective components therein;

23 p. Whether Plaintiff and the Class are entitled to compensatory damages, and
24 the amount of such damages;

25 q. Whether, as a result of Alienware's fraud, Plaintiff and the Class are
26 entitled to civil penalties and/or punitive damages, and the amount of such damages;
27
28

1 r. Whether Alienware should be enjoined from engaging in the methods, acts
2 or practices alleged herein; and

3 s. Whether Alienware should be ordered to disgorge, for the benefit of the
4 Class, all or part of its ill-gotten profits received from the sale of the defective Affected Computers and
5 replacement components and/or make restitution to Plaintiff and members of the Class.

6 **Adequacy**

7 81. Plaintiff will fairly and adequately represent and protect the interests of the Class.
8 Plaintiff has retained counsel with substantial experience in prosecuting consumer class actions,
9 including actions involving defective products.

10 82. Plaintiff and his counsel are committed to vigorously prosecuting this action on behalf of
11 the Class, and have the financial resources to do so. Neither Plaintiff nor his Counsel have interests
12 adverse to those of the Class.

13 **Superiority**

14 83. Absent class treatment, Plaintiff and members of the Class will continue to suffer harm
15 and damages as a result of Alienware's unlawful and wrongful conduct.

16 84. A class action is superior to all other available methods for the fair and efficient
17 adjudication of this controversy. Without a class action, individual Class members would face
18 burdensome litigation expenses, deterring them from bringing suit or adequately protecting their rights.
19 Because of the relatively modest economic value of the individual Class members' claims, few could
20 likely seek their rightful legal recourse. Absent a class action, Class members would continue to incur
21 harm without remedy, while Alienware would continue to reap the benefits of its misconduct.

22 85. The consideration of common questions of fact and law will conserve judicial resources
23 and promote a fair and consistent resolution of these claims.

24 **FIRST CAUSE OF ACTION** 25 **Violation of the California Consumer Legal Remedies Act,** 26 **Civ. Code Section 1750, et seq. (the "CLRA")** 27 **(On Behalf of Consumers Only)** 28

1 86. Plaintiff incorporates by reference the allegations contained in the preceding paragraphs
2 of this Complaint.

3 87. Defendant Alienware is a “person” as defined by Civil Code § 1761(c).

4 88. Plaintiff and many Class members are “consumers” within the meaning of Civil Code
5 § 1761(d).

6 89. The Affected Computers are “goods” within the meaning of Civil Code § 1761(a).

7 90. Alienware violated the CLRA’s proscription against concealment of the characteristics,
8 use, benefit, or quality of goods by actively concealing at all times from Plaintiff, Class members, and
9 everyone in the chain of distribution in all of its broadly disseminated warranties, marketing and
10 advertising, the material fact that the Affected Computers are defective and substantially certain to
11 overheat and fail prematurely. Specifically, Alienware’s active concealment of material facts violated
12 (a) § 1770(a)(5)’s proscription against representing that goods have uses or characteristics they do not
13 actually have; (b) § 1770(a)(7)’s proscription against representing that goods are of a particular standard
14 or quality when they are of another; and (c) § 1770(a)(9)’s proscription against advertising goods with
15 the intent not to sell them as advertised.
16

17 91. Under California law, a duty to disclose arises in four circumstances: (1) when the
18 defendant is in a fiduciary relationship with the plaintiff; (2) when the defendant had exclusive
19 knowledge of material facts not known to the plaintiff; (3) when the defendant actively conceals a
20 material fact from the plaintiff; and (4) when the defendant makes partial representations but also
21 suppresses some material facts.

22 92. Alienware had a duty to disclose material facts regarding the Defects alleged here
23 pursuant to the second, third, and fourth prongs:

24 (a) Alienware had and has a duty to disclose material facts about the Defects because
25 Alienware had exclusive knowledge of the Defects at the time of sale. The Defects, while obvious to an
26 expert engineer, are latent and not something that Plaintiff or Class members could, in the exercise of
27 reasonable diligence, have discovered independently prior to purchase.
28

1 (b) Alienware had and has a duty to disclose material facts about the Defects because
2 Alienware undertook active steps to conceal them. Plaintiff is aware of nothing in Alienware's
3 advertising, publicity, or marketing materials that discloses the truth about the Defects, despite ample
4 evidence that Alienware was aware of the problem by virtue of, if nothing else, numerous consumer
5 complaints. Alienware has at all times denied the existence of any defect in the Affected Computers.

6 (c) Alienware had and has a duty to disclose material facts about the Defects because
7 Alienware made and makes partial representations about the Affected Computers and also suppresses
8 material facts about them. Alienware's partial representations have appeared in its print advertising,
9 press releases, and website. These partial representations give rise to a duty to disclose the full story—
10 that the Affected Computers are unreasonably likely to overheat and fail prematurely under normal use
11 conditions due to the Defects alleged and described herein.

12 93. Had Plaintiff known the concealed material facts, he would have purchased a different
13 computer or paid less for the Affected Computer he purchased.

14 94. Alienware's concealment of material facts was designed to induce Plaintiff and the
15 members of the Class to purchase the Affected Computers.

16 95. Plaintiff and the Class suffered actual damages as a direct and proximate result of
17 Alienware's actions, concealment and/or omissions in violation of the CLRA, as evidenced by their
18 decisions to purchase Affected Computers that were defective. Had they known the true character and
19 quality of the Affected Computers, Plaintiff and Class members would not have purchased (or would
20 have paid less for) them.

21 96. To this day, Alienware continues to violate the CLRA by concealing the defective nature
22 of the Affected Computers and continuing to sell replacement parts for the Affected Computers,
23 continuing to service (and profit unjustly from) the Affected Computers in relation to failures due to the
24 Defects, and by failing or refusing to reveal to Class members that the cause of the problems with the
25 Affected Computers is an inherent defect and not a result of improper use or maintenance.

26 97. Alienware further violated the CLRA by including an unconscionable provision in its
27 Terms and Conditions agreement. Specifically, the arbitration clause contained in the Terms and
28

1 Conditions agreement violates Section 1770(a)(19)'s proscription against inserting an unconscionable
 2 provision in a consumer contract.

3 98. Plaintiff, on behalf of himself and for all those similarly situated, demands judgment
 4 against Alienware under the CLRA for injunctive relief in the form of restitution and/or proportional
 5 disgorgement of funds paid to Alienware to purchase Affected Computers or repair and/or replace parts
 6 of the Affected Computers, an injunction requiring Alienware to adequately repair the Defects or replace
 7 the Affected Computers free of charge, and an award of attorneys' fees pursuant to Civil Code
 8 § 1780(d). Plaintiff seeks this injunctive relief for Alienware's violations of CLRA §§ 1770(a)(5), (7),
 9 (9) and (19).

10 99. In accordance with section 1782(a) of the CLRA, Civ. Code § 1782(a), on October 4,
 11 2006, Plaintiff's counsel, on behalf of Plaintiff Oestreicher, served Alienware, by certified mail, return
 12 receipt requested, with notice of its alleged violations of CLRA §§ 1770(a)(5), (7) and (9) relating to the
 13 Affected Computer owned by Oestreicher. A true and correct copy of this notice is attached hereto as
 14 Exhibit 10.

15 100. Alienware responded to Plaintiff's CLRA notice in an email from Alienware's "critical
 16 issues team" dated October 11, 2006. A true and correct copy of this email is attached hereto as Exhibit
 17 11. Alienware's response states that it will arrange for repair in their Miami facilities but that any parts
 18 that are replaced will need to be paid for at Plaintiff's expense. This response does not address the
 19 Defect in the Plaintiff's or Class Members' Affected Computers. Alienware continues its refusal to
 20 offer consumers any remedies at all to address Defects in the Affected Computers.

21 101. Alienware thus failed to provide appropriate relief for its violations of the CLRA within
 22 30 days of receipt of Plaintiff's notice letter, received by Alienware on October 4, 2006. Therefore, in
 23 accordance with CLRA section 1782(b), Plaintiff is entitled, under CLRA section 1780, to recover or
 24 obtain any of the following relief for Alienware's violation of CLRA sections 1770(a)(5), (7), and/or
 25 (9):

- 26 • actual damages under Civ. Code § 1780(a)(1);
- 27 • punitive damages under Civ. Code § 1780(a)(4);
- 28

- attorneys' fees and costs under Civ. Code § 1780(d); and
- any other relief the Court deems proper under Civ. Code § 1780(a)(5).

SECOND CAUSE OF ACTION

Violation of California Bus. & Prof. Code Sections 17200 & 17500 (the "Unfair Business Practices Act")

102. Plaintiffs incorporate by reference the allegations contained in preceding paragraphs of this Complaint.

103. Business & Professions Code § 17200 prohibits acts of "unfair competition." As used in this section, "unfair competition" encompasses three distinct types of misconduct:

- (a) "unlawful...business acts or practices;" (b) "unfair or fraudulent business acts or practices;" and (c) "unfair, deceptive or misleading advertising."

104. Alienware violated the Unfair Business Practices Act, Business and Professions Code §§ 17200 and 17500, *et seq.*, by engaging in conduct that violated each of the three prongs identified by the statute and outlined in Paragraph 103, above.

105. Alienware committed an *unlawful* business act or practice in violation of the Unfair Business Practices Act, Business and Professions code § 17200, *et seq.*, when it violated the CLRA as alleged in Paragraphs 86-101, above.

106. Alienware committed an *unlawful* business act or practice in violation of the Unfair Business Practices Act, Business and Professions code § 17200, *et seq.*, when it violated the common law prohibition against fraudulent concealment/nondisclosure as alleged in Paragraphs 116-129, below.

107. Alienware committed *unfair and fraudulent* business acts and practices in violation of the Unfair Business Practices Act, Business and Professions Code §§ 17200 and 17500, *et seq.*, when it concealed and/or failed to disclose the true defective nature of the Affected Computers in its marketing, advertising and other broadly disseminated representations in a manner likely to deceive the public.

108. Alienware committed *unfair and fraudulent* business acts and practices in violation of the Unfair Business Practices Act, Business and Professions Code §§ 17200 and 17500, *et seq.*, when it

1 refused to repair the Defects and/or failures arising from the Defects free of charge and when it refused
2 to sell repair or replacement parts to consumers.

3 109. Alienware disseminated *unfair, deceptive, untrue and/or misleading advertising* in
4 violation of the Unfair Business Practices Act, Business & Professions Code §§ 17200 and 17500, *et*
5 *seq.*, when it concealed and/or failed to disclose the true defective nature of the Affected Computers in
6 its marketing, advertising and other broadly disseminated representations in a manner likely to deceive
7 the public. Alienware's misleading advertising statements are set forth at Paragraph 64, above.

8 110. Alienware's deceptive practices were specifically designed to induce Plaintiff and
9 members of the Class to purchase Affected Computers.

10 111. Alienware's deceptive practices have deceived and/or are likely to deceive Plaintiff and
11 members of the consuming public.

12 112. To this day, Alienware continues to violate the Unfair Business Practices Act by
13 continuing to actively conceal the defective nature of the Affected Computers and by charging
14 consumers for repairs necessitated by the Defects.

15 113. As a direct and proximate cause of Alienware's violation of the Unfair Business Practices
16 Act, Plaintiff and the Class have suffered harm in that they own Affected Computers that have
17 prematurely failed, will prematurely fail, or are substantially certain to prematurely fail and have
18 required or will require Plaintiff and the Class to incur costs to repair and replace defective components
19 or defective Affected Computers as a whole.

20 114. As a direct and proximate result of Alienware's violation of the Business and Professions
21 Code § 17200, *et seq.*, Alienware has been unjustly enriched and should be required to make restitution
22 to Plaintiff and the Class or disgorge its ill-gotten profits pursuant to Business & Professions Code
23 § 17203.

24 115. Plaintiff, on behalf of himself and for all others similarly situated, demands judgment
25 against Alienware for injunctive relief in the form of restitution, and/or disgorgement of funds paid to
26 Alienware to purchase the Affected Computers or to repair and replace defective components, or
27
28

injunctive relief in the form of repairing and replacing defective components on Plaintiff's and Class members' Affected Computers, as well as attorneys' fees, costs and interest.

THIRD CLAIM FOR RELIEF
Fraudulent Concealment/Nondisclosure

116. Plaintiff incorporates by reference the allegations contained in the preceding paragraphs of this Complaint.

117. Alienware knew, or was reckless in not knowing, that the Affected Computers are defective in that they are substantially certain to fail well in advance of their expected useful life.

118. Alienware fraudulently concealed from and/or intentionally failed to disclose to Plaintiff, the Class, and all others in the chain of distribution (*e.g.*, concealments and omissions in Alienware's communications with wholesalers, retailers, and others in the chain of distribution that were ultimately passed on to Plaintiff and the Class) the true nature of the Affected Computers, which is that the heat removal systems they contain are inadequate and will allow the Affected Computers to overheat and prematurely fail.

119. Under California law, a duty to disclose arises in four circumstances: (1) when the defendant is in a fiduciary relationship with the plaintiff; (2) when the defendant had exclusive knowledge of material facts not known to the plaintiff; (3) when the defendant actively conceals a material fact from the plaintiff; and (4) when the defendant makes partial representations but also suppresses some material facts.

120. Alienware had a duty to disclose material facts regarding the Defects alleged here pursuant to the second, third, and fourth prongs:

(a) Alienware had and has a duty to disclose material facts about the Defects because Alienware had exclusive knowledge of the Defects at the time of sale. The Defects, while obvious to an expert engineer, are latent and not something that Plaintiff or Class members could, in the exercise of reasonable diligence, have discovered independently prior to purchase.

(b) Alienware had and has a duty to disclose material facts about the Defects because Alienware undertook active steps to conceal them. Plaintiff is aware of nothing in Alienware's

1 advertising, publicity, or marketing materials that discloses the truth about the Defects, despite ample
2 evidence that Alienware was aware of the problem by virtue of, if nothing else, numerous consumer
3 complaints.

4 (c) Alienware had and has a duty to disclose material facts about the Defects because
5 Alienware made and makes partial representations about the Affected Computers but also suppresses
6 some material facts. These partial representations give rise to a duty to disclose the full story—that the
7 Affected Computers are unreasonably likely to overheat and fail prematurely under normal use
8 conditions due to the Defects alleged and described herein.

9 121. The facts concealed and/or not disclosed by Alienware to Plaintiff and the Class are
10 material facts in that a reasonable person would have considered them important in deciding whether or
11 not to purchase (or to pay the same price for) a computer.

12 122. Alienware intentionally concealed and/or failed to disclose the problems with the
13 Affected Computers for the purpose of inducing Plaintiff and the Class to act thereon.

14 123. Plaintiff and the Class justifiably acted or relied upon to their detriment the concealed
15 and/or non-disclosed facts as evidenced by their purchase of the Affected Computers and/or replacement
16 parts for them.

17 124. Had Plaintiff and the Class known of the Defects, they would not have purchased (or
18 would have paid less for) their Affected Computers.

19 125. As a direct and proximate cause of Alienware's misconduct, Plaintiff and Class members
20 have suffered actual damages in that they bought and own Affected Computers that contain inherent
21 defects and that have prematurely failed or are substantially certain to prematurely fail, and will be
22 required to incur costs to repair and/or replace the defective components or the computers as a whole.

23 126. Alienware's conduct has been and is wanton and/or reckless and/or shows a reckless
24 indifference to the interests of others.

25 127. Alienware has acted with "malice" as that term is defined in Civ. Code § 3294(c)(1) by
26 engaging in conduct that was and is intended by Alienware to cause injury to the Plaintiff and the Class.
27
28

128. Alienware has committed “fraud” as that term is defined in Civ. Code § 3294(c)(3) through its concealment of material facts known to Alienware with the intent to cause injury to the Plaintiff and the Class.

129. Plaintiff, on behalf of himself and all others similarly situated, demands judgment against Alienware for actual and punitive damages in accordance with Civ. Code § 3294(a) for himself and each member of the Class, plus attorneys’ fees for the establishment of a common fund, interest, and costs.

FOURTH CLAIM FOR RELIEF
Unjust Enrichment

130. The preceding paragraphs of this Complaint are realleged and incorporated by reference and asserted by Plaintiff on behalf of himself and members of the class.

131. By its wrongful acts and omissions described herein, including selling the Affected Computers, charging for repairs, and refusing to sell parts so that Plaintiff and Class Members can obtain repairs elsewhere, Alienware has been unjustly enriched at the expense of Plaintiff and the Class.

132. Separate and apart from whether or not such conduct constitutes common law fraud or a statutory violation, it would be inequitable for Alienware to retain the profits, benefits, and other compensation obtained by it from its wrongful conduct in manufacturing, marketing and selling the Affected Computers.

133. Plaintiff, on behalf of himself and all others similarly situated, demands restitution from Alienware, and an Order of this Court disgorging all profits, benefits, and other compensation obtained by Alienware from its wrongful conduct and awarding attorneys’ fees, costs and interests.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff and Class members request that the Court enter an Order or judgment against Defendant including the following:

134. An Order certifying this action as a Class Action (and certifying any appropriate subclasses), appointing Plaintiff as Class Representative and his counsel of record jointly as Class Counsel;

135. Damages in the amount of monies paid for Affected Computers;

136. Actual damages, statutory damages, punitive or treble damages, and such other relief as provided by the statutes cited herein;

137. Prejudgment and post-judgment interest on such monetary relief;

138. Equitable relief in the form of restitution and/or restitutionary disgorgement of sums received by Alienware as a result of the unfair, unlawful and/or deceptive conduct alleged in herein;

139. Injunctive relief;

140. The costs of bringing this suit, including reasonable attorneys' fees; and

141. All other relief to which Plaintiff and members of the Class may be entitled at law or in equity and which the Court deems proper.

DATED: January 7, 2008

Respectfully submitted,

LIEFF CABRASER HEIMANN & BERNSTEIN,
LLP

By: /s/ Kristen E. Law
Jonathan D. Selbin (SBN 170222)
Kristen E. Law (SBN 222249)
LIEFF, CABRASER, HEIMANN &
BERNSTEIN LLP
275 Battery Street, 30th Floor
San Francisco, California 94111-3336
Tel: (415) 956-1000; Fax: (415) 956-1008

ADDITIONAL COUNSEL FOR PLAINTIFF

Michael L. Kelly (SBN 82063)
Robert K. Friedl (SBN 134947)
KIRTLAND & PACKARD LLP
2361 Rosecrans Avenue, Fourth Floor
El Segundo, California 90245
Tel.: (310) 536-1000; Fax: (310) 536-1001

David P. Meyer (Ohio Bar No. 0065205) admitted *pro hac vice*
Patrick G Warner (Ohio Bar No. 0064604) admitted *pro hac vice*
Matthew R. Wilson (Ohio Bar No. 0072925) admitted *pro hac vice*
DAVID P. MEYER & ASSOCIATES CO., LPA
1320 Dublin Road, Suite 100
Columbus, Ohio 43215
Tel: (614) 224-6000; Fax: (614) 224-6066

Jeffrey B. Kaplan (Florida Bar No. 039977) *pro hac vice* admission pending
DIMOND KAPLAN & ROTHSTEIN, P.A.

200 S. E. 1st Street, Suite 708
Miami, Florida 33131
Tel: (305) 374-1920; Fax: (305) 374-1961

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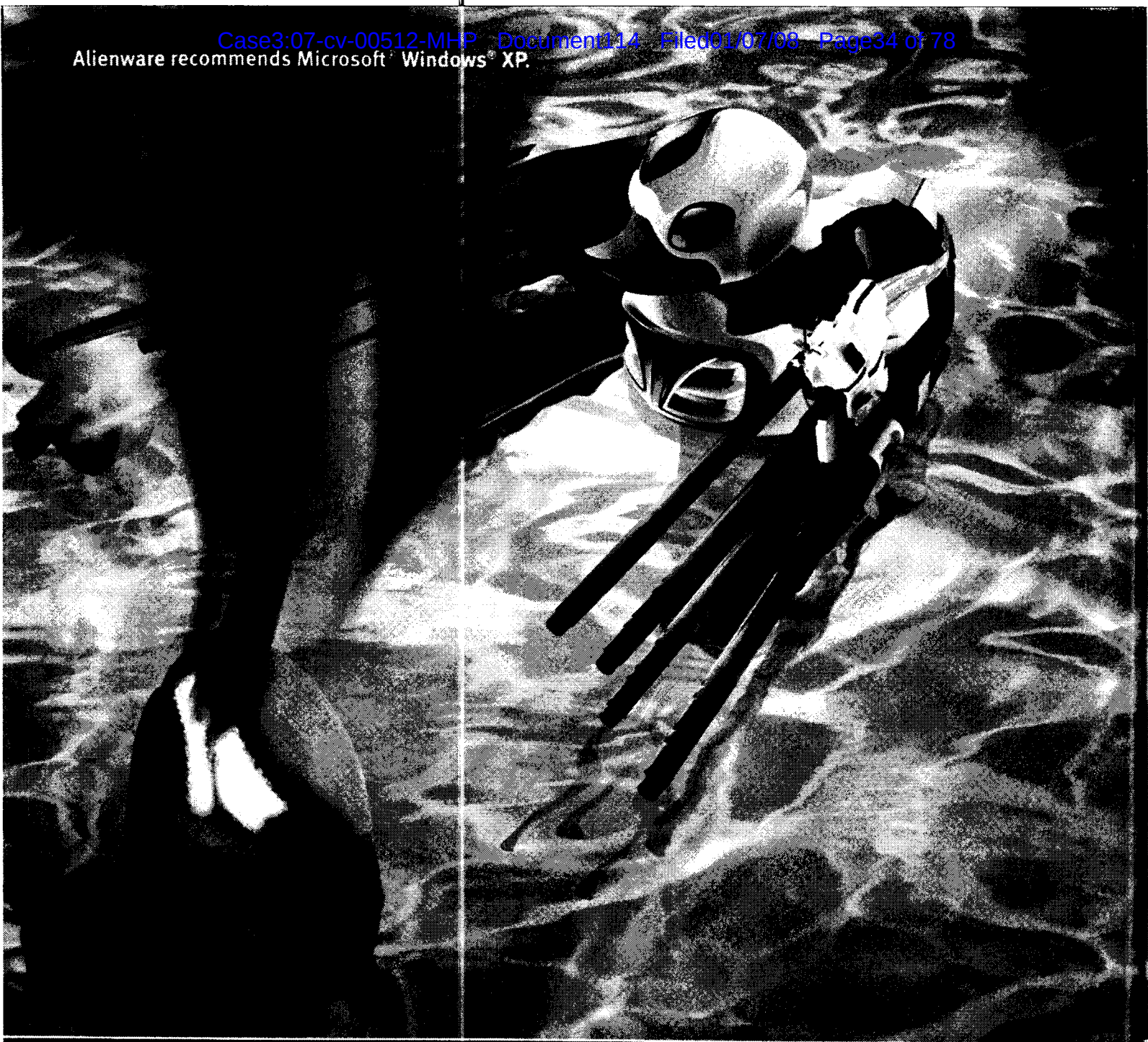
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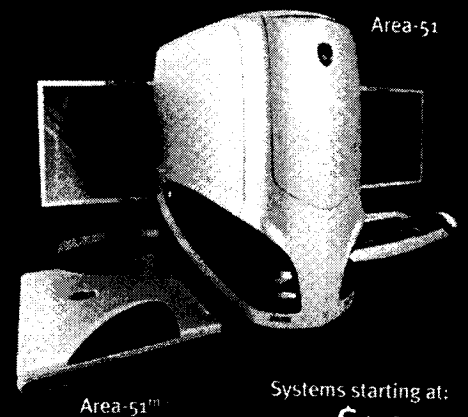
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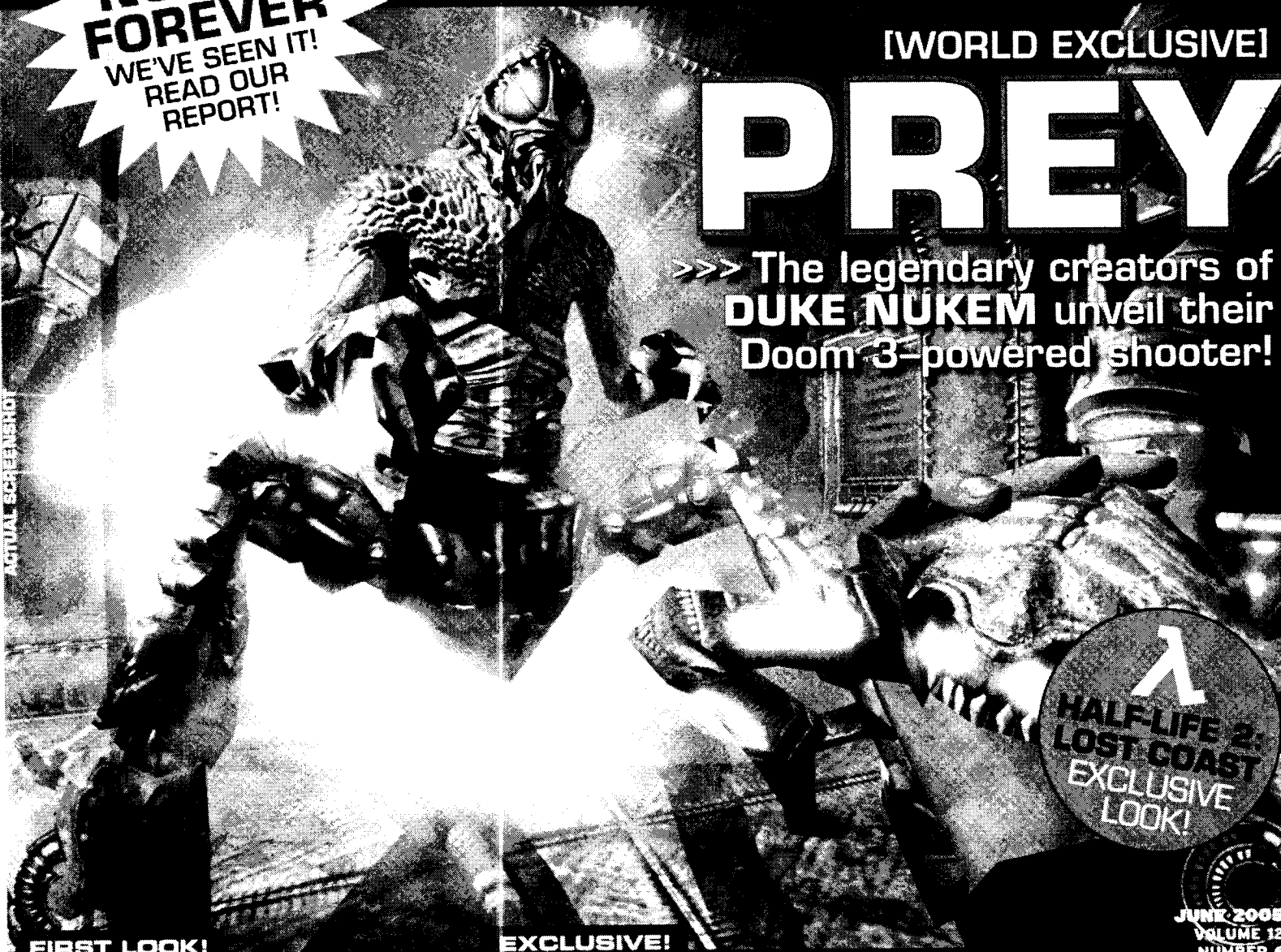
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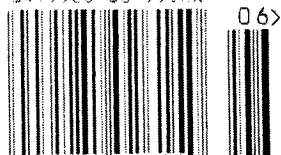
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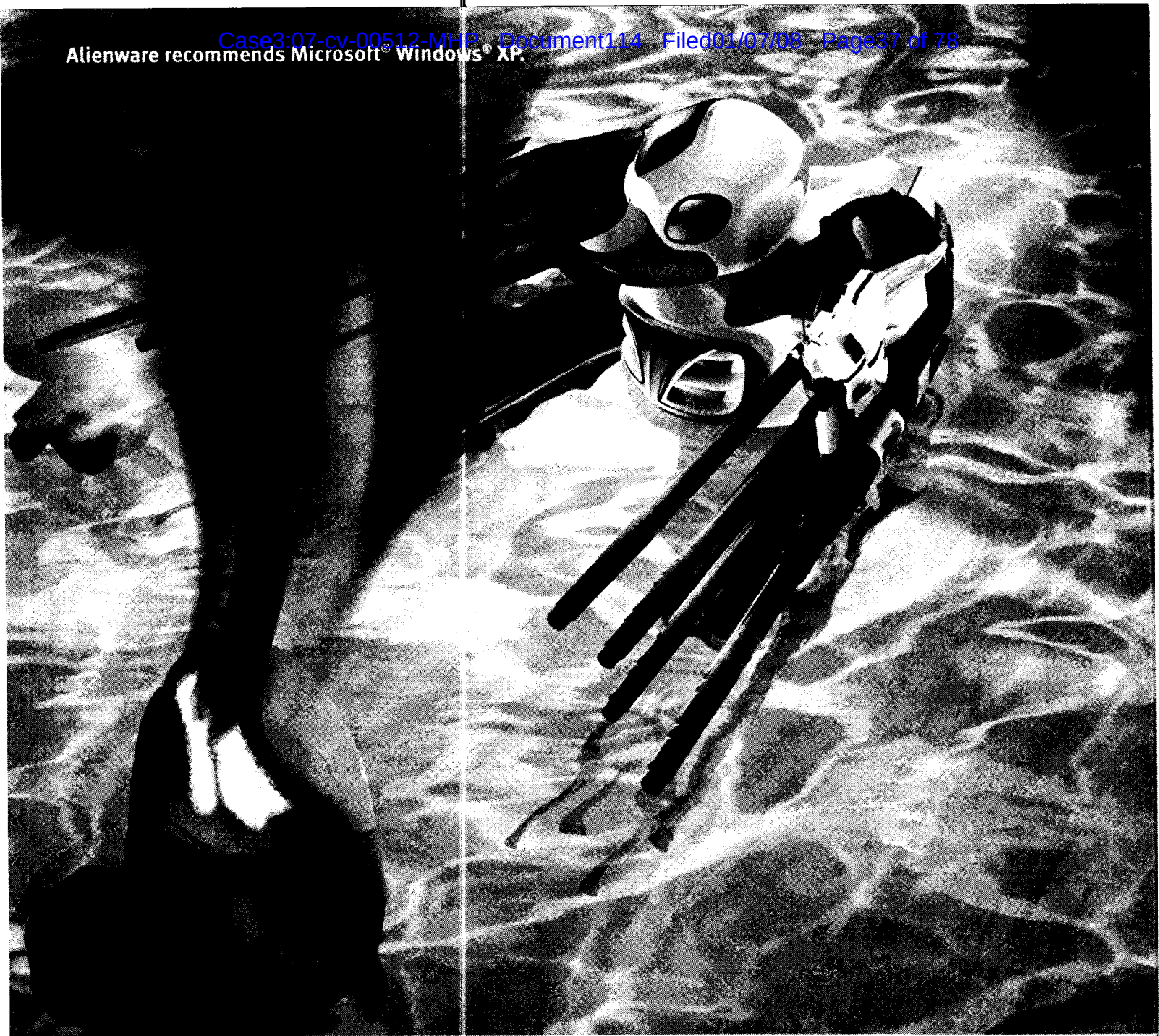
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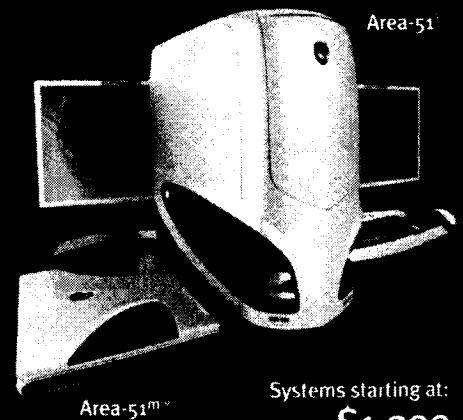
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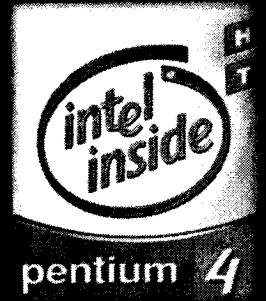
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JULY 2005
VOLUME 12
NUMBER 7

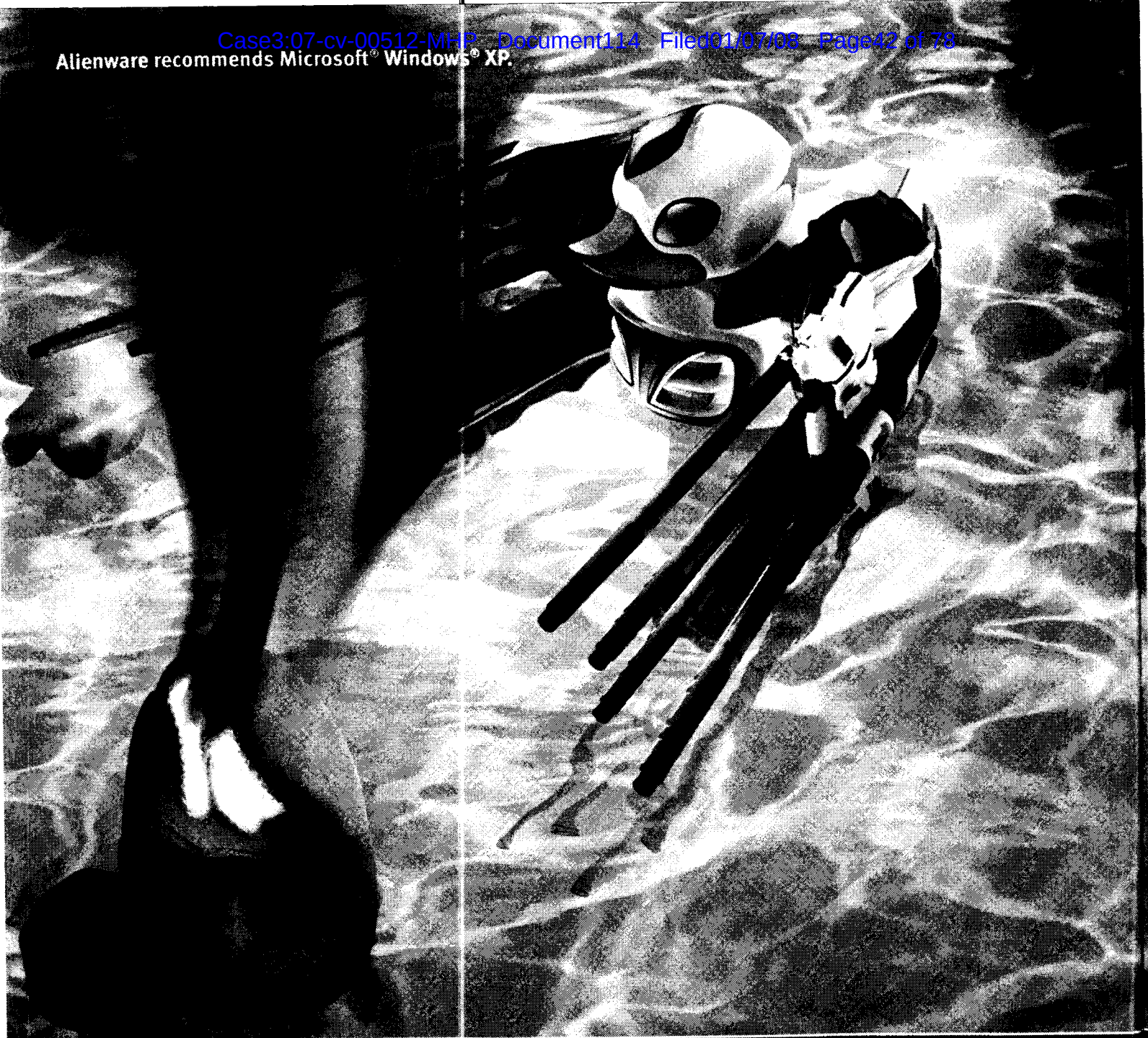
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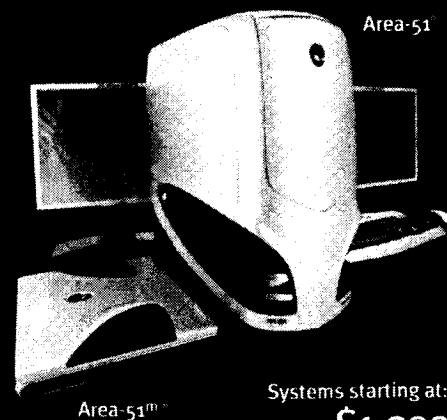
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**GUILD
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THE CREATOR OF
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WORLD-EXCLUSIVE FIRST LOOK AT CHRIS TAYLOR'S NEW RTS!

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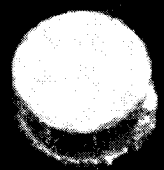
THE TOP 10 GAMES OF E3
UNREAL TOURNAMENT 2007 · ALAN WAKE
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AND MORE

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SUPREME COMMANDER

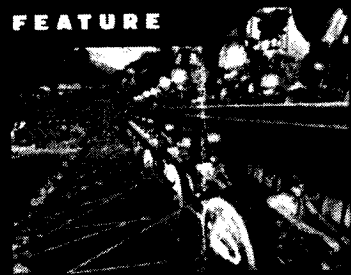
FEATURE



22

From Game God Chris Taylor comes the spiritual sequel to his RTS masterpiece *Total Annihilation*. In *Supreme Commander*, the genre moves up to a god's-eye view of an entire theater of war. Need more? Just imagine all the giant robots with cool freakin' laser beams!

FEATURE



36

We've got the scoop on some of the hottest new games to come out of E3 2005. Get full details on *Alan Wake*, *Unreal Tournament 2007*, *Rise & Fall*, *Star Wars: Empire at War*, Will Wright's *Spore*, *Rise of Legends*, *D&D Online*, and more. This story is bursting with goodness!

SCOOPS



12

The follow-up to *Brothers in Arms*, *Earned in Blood*, promises more explosive World War II action, along with better enemy AI and co-op multiplayer. The complete story, right here. And as an added bonus, the Allies decisively win this time, thus ending the WWII genre. Nah, just playin'.

STRATEGY



92

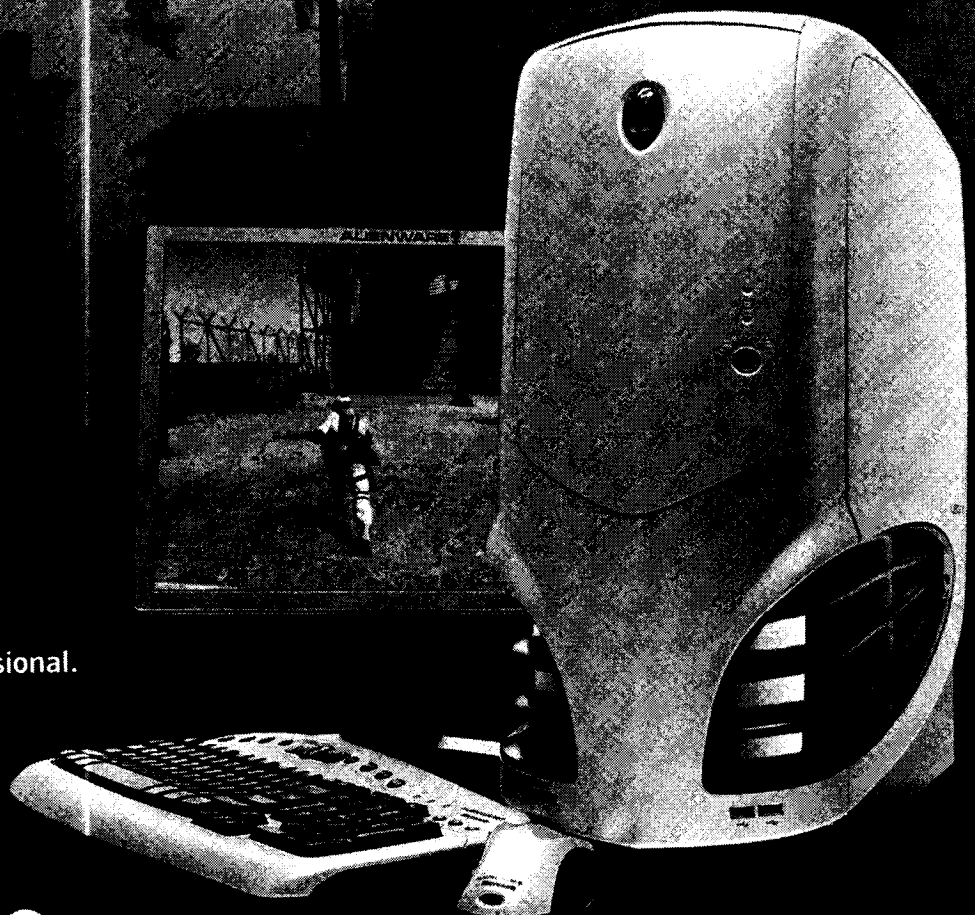
Oh, don't fight it: "cheating" is just another word for "winning." Get a helping hand with rock-'em sock-'em cheats for *Act of War*, *LEGO Star Wars*, *Psychonauts*, *Doom 3: Resurrection of Evil*, *Empire Earth II*, and *SWAT 4*. God-mode goodness starts here!

WIN AN ALIENWARE AREA 51 5500

BATTLEFIELD



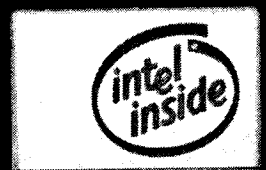
Alienware recommends
Microsoft® Windows® XP Professional.



PLAYS BEST ON
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Select Area-51 5500 systems feature Intel® Pentium® Processor Extreme Edition

Custom-built and optimized for high-performance PC gaming, Alienware systems deliver unrivaled performance with the highest-detail possible and ultra-smooth gameplay. Incorporating state-of-the-art components, innovative engineering and design, and providing unprecedented customer service, Alienware systems offer the ultimate gaming experience. Immerse yourself in a new level of realism, whether you are defeating evil enemies, building your own empire, or conquering new worlds online. PC games **Play Best On Alienware**.



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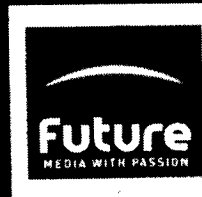
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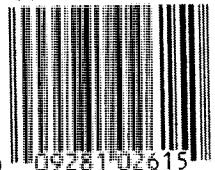


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SOLO EDITION

Looks *can* kill

Especially with this kind of power



AREA-51m™ 7700 MOBILE SYSTEM

› **OPERATING SYSTEM:**

Microsoft® Windows® XP PRO Edition with Service Pack 2 ◀

› **PROCESSOR:**

Intel® Pentium® 4 530J Desktop Processor w/ HT Technology 3.0GHz 800MHz FSB 1MB Cache ◀

› **MEMORY:**

512MB Dual Channel DDR2 SO-DIMM at 533MHz 2 x 256MB ◀

› **GRAPHICS CARD:**

NVIDIA GeForce™ Go 6800 Ultra with 256MB of DDR3 memory ◀

› **HARD DRIVE:**

120GB (60GB x 2) 5400 RPM ATA100 RAID 0 ◀

› **OPTICAL DRIVE:**

8X Dual Layer DVD+/-RW / 24X CD-RW Combo w/Software ◀

› **LCD:**

17" Wide Screen XGA+ featuring Clearview Technology ◀

\$2,799 [after \$400 rebate]



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Alienware recommends Microsoft® Windows® XP Professional



AREA-51™ 5500 DESKTOP SYSTEM

> OPERATING SYSTEM:

Microsoft® Windows® XP Professional Edition with Service Pack 2 <

> PROCESSOR:

Intel® Pentium® 4 550 Desktop Processor w/ HT Technology 3.4GHz 800MHz FSB 1MB Cache <

> MEMORY:

1GB Dual Channel DDR2 SDRAM at 533MHz < 2 x 512MB <

> GRAPHICS CARD:

NVIDIA® GeForce™ 7800 GTX PCI Express 256MB DDR3 w/Dual Digital and TV Out <

> HARD DRIVE:

160GB (80GB x 2) Serial ATA 7,200 RPM w/16MB Cache RAID 0 <

> OPTICAL DRIVE:

16x Dual Layer DVD±R/W <

\$1,999* [after \$400 rebate]

Add the Alienware® 20.1" LCD Display for \$749

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Alienware recommends Microsoft® Windows® XP Professional



AREA-51™ 5500 DESKTOP SYSTEM

› **OPERATING SYSTEM:**

Microsoft® Windows® XP Professional Edition with Service Pack 2 <

› **PROCESSOR:**

Intel® Pentium® 4 550J Desktop Processor w/ HT Technology 3.4GHz 800MHz FSB 1MB Cache <

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1GB Dual Channel DDR2 SDRAM at 533MHz - 2 x 512MB <

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› **HARD DRIVE:**

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EXHIBIT 2

ALIENWARE UNVEILS THE AREA-51M 7700 MOBILE DESKTOP

Alienware's First PCI Express-Powered Mobile Desktop Offers Desktop Power in a Portable System

MIAMI, FL – November 8, 2004 - Alienware®, the leading manufacturer of high-performance desktop, notebook, media center, and professional systems, announced the availability of the new Alienware Area-51m™ 7700 mobile desktop that delivers the power of a high-performance desktop in a conveniently portable platform. The Area-51m 7700 is powered by the Intel® Pentium® 4 desktop processor with 1MB of cache and is Alienware's first mobile system to provide the cutting-edge performance gains of PCI Express™ technology.

With a remarkable combination of power and flexibility, the Alienware Area-51m 7700 mobile desktop delivers the ideal solution for users seeking a portable alternative to their desktop, an easy-to-move gaming system, or a high-performance system that fits both limited spaces and hectic lifestyles. Powered by Intel's Pentium 4 desktop processor, the Area-51m 7700 provides expansion of up to 4 GB of DDR 2 memory, dual hard drive support with RAID, and dual optical drives to serve as the ultimate desktop replacement.

Power-hungry gamers and enthusiasts alike will benefit from the Area-51m 7700's removable video card modules featuring the new NVIDIA® GeForce™ Go 6800, today's fastest mobile graphics card. With no additional set-up of speakers, keyboards, or monitor necessary, the Area-51m 7700 is the perfect companion for any LAN party. The Area-51m 7700 also offers a crystal-clear 17" widescreen SXGA + LCD display with built-in video conferencing.

"Alienware is excited to offer a mobile system with the perfect blend of desktop power and portability," said Robert Lusk, vice president of sales and marketing for Alienware. "Alienware's steadfast commitment to providing high-performance systems that meet the ever-evolving needs of our customers continues with the introduction of the Area-51m 7700."

"Powered by NVIDIA's highly advanced GeForce Go 6800, the Area-51m 7700 mobile desktop delivers dramatic visual enhancements to leading-edge games and multimedia applications," said Rob Csongor, General Manager, NVIDIA mobile GPU business. "Area-51m 7700 users will now enjoy the breakthrough graphics performance of the industry's most powerful desktops in a highly mobile setting."

About Alienware

Alienware manufactures high-performance desktop, notebook, and media center systems and leading-edge professional systems. Alienware offers unique and award-winning products that incorporate state-of-the-art components, innovative engineering and design, and unprecedented customer service. Alienware systems are available direct within the United States and Europe. For more information, please visit www.alienware.com or call 1-800-ALIENWARE (254-3692).

###

Press Contact:

Derek Asato
The Bohle Company
Derek@bohle.com
(310) 785-0515

Alienware Contact:

Jaclyn Gonzalez
Public Relations Specialist
jaclyn_gonzalez@alienware.com
(305) 251-9797

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EXHIBIT 3



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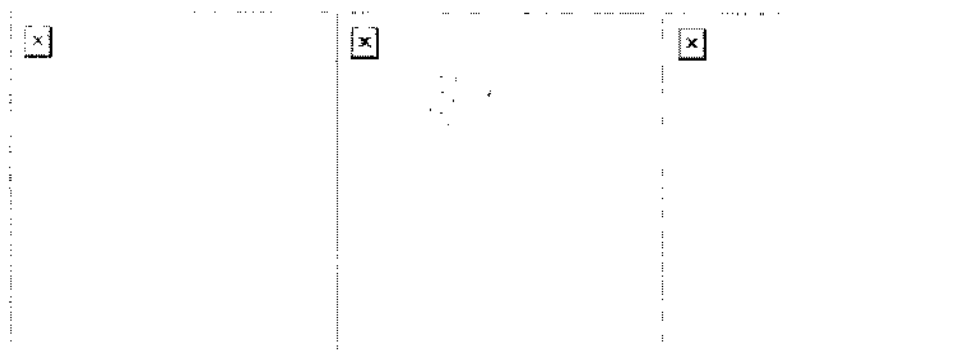
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5.26.2004 Desktop Systems: ATI RADEON™ X800 XT Platinum Ed. - Now Available



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Alienware PCI Express
 extended! An advanced
 Dual Channel DDR2 51
 Definition Audio, and 1
 Storage Technology is
 biggest advancement
 over a decade.

Take it from a company built by gamers, we have the expertise to help you configure an awesome gaming PC that will elevate your gaming experience.

[x]

Alienware
 don't you
 speed it up.

Sometimes, the game reviews are great and the screen shots look awesome, but when you rush home from the store and fire it up, you're a bit disappointed. You try to tweak the game settings, but have to make some disappointing compromises to get the game to run correctly. Chunky and slow or blurry and lifeless, it's a choice you shouldn't have to make. And you won't anymore, now that you have found Alienware!

[x]

Alienware's
Hyperspe
 combine
 and Value

Our Gaming PCs feature cutting-edge technology and are optimized for performance and designed to deliver ultra-smooth gameplay at maximum resolutions. Finally, you can take advantage of the latest game technology: the colors, pixel shaders, shadow detail, and filters which bring game worlds to life!

Recent Review

[x]

[x]

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PC Work
2004 Work

Click below to learn more about one of these recent product launches:

Click below to learn more about these popular products:

[Next-Generation PCI-Express](#)

[Area-51m](#)

"You want fast?" The 4-based Aurora Extreme competes with the

- Dual-Channel DDR2 Memory
- Intel® High-Definition Audio

- Area-51
- Aurora

Fastest Ever PC World
150"

[Read More Reviews](#)



How Does Alienware Compare?

With almost twice the number of customer reviewers as Dell, Alienware scores almost 3 times higher in customer satisfaction on ResellerRatings.com.



Epic Gam



"Alienware is the only consistently excellent and flexible system to play, Unleash games to be experienced."

Matt Norton
Producer, Epic Games

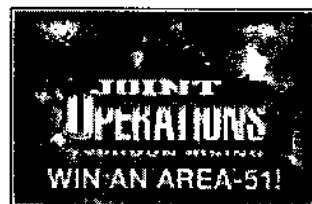
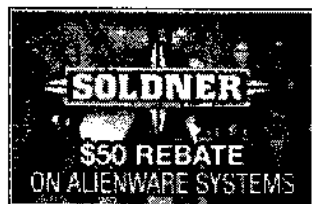
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Alienware receives an from Smart Computing outstanding customer



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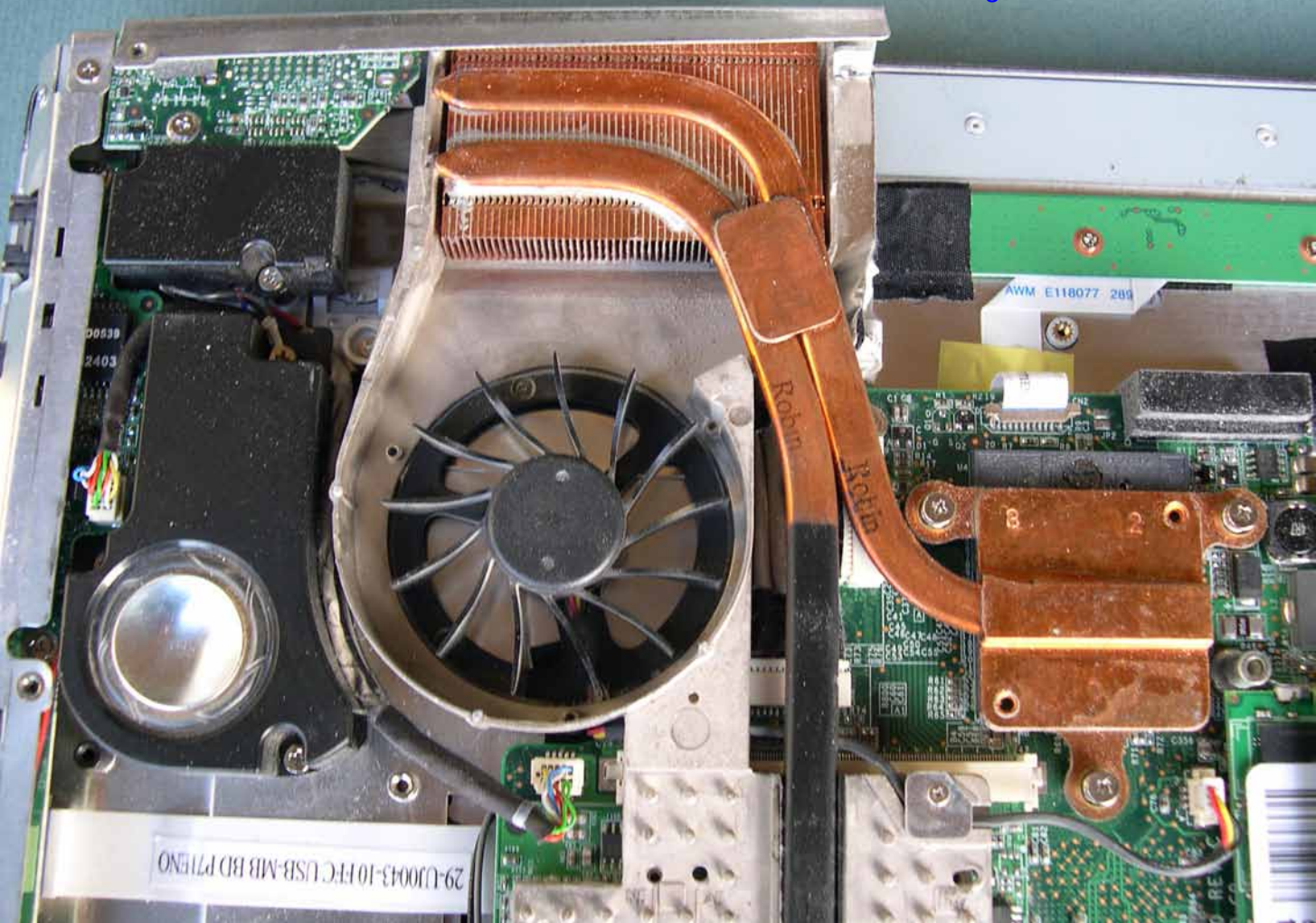
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This Class B digital apparatus meets all requirements of the Canadian Interference-Causing Equipment Regulation.
Cet appareil numérique de la classe B respecte toutes les exigences du Règlement sur le matériel brouilleur du Canada.

Serial No./ 序號:



NO. 9447551852

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中國製造 XF

CAUTION:
HIGH TEMPERATURE PARTS
高溫注意

P/N: 31-D90TN-102
2005-09-02

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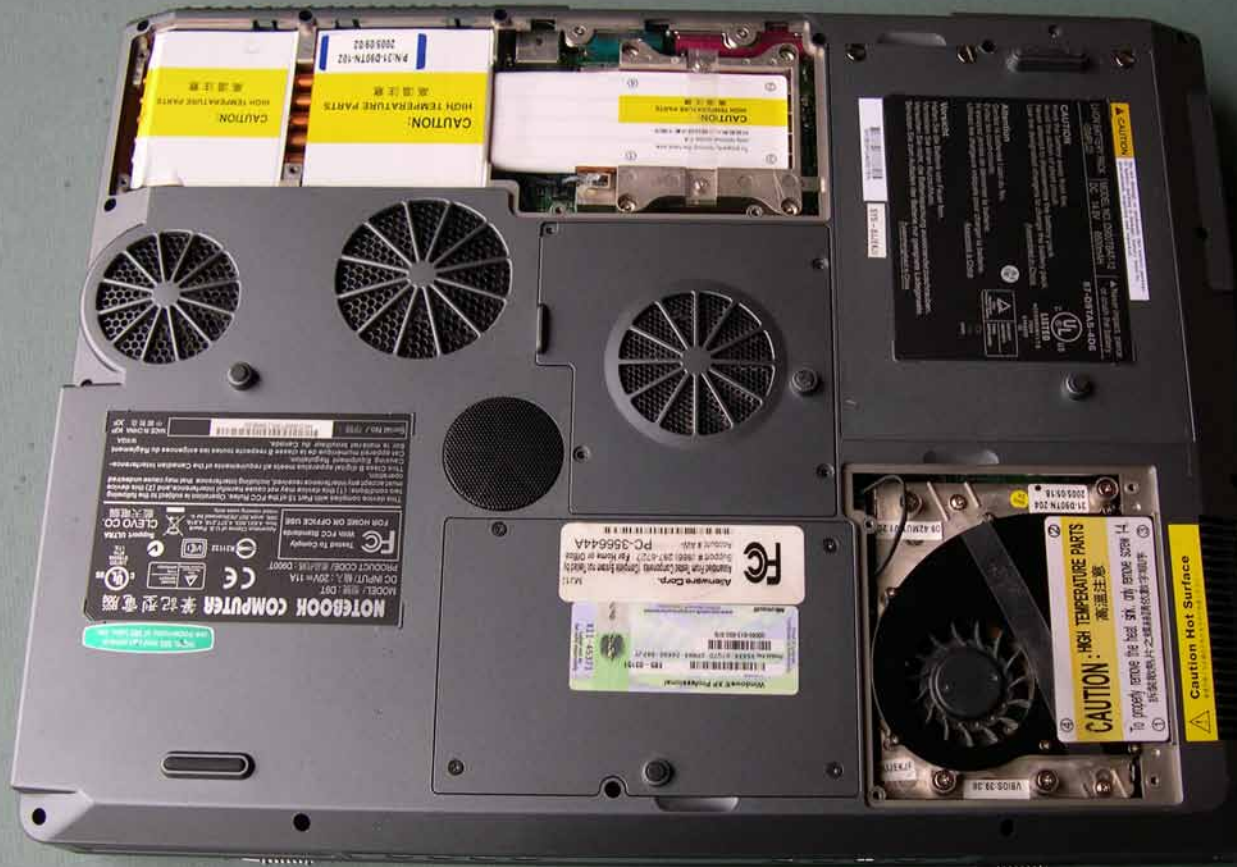
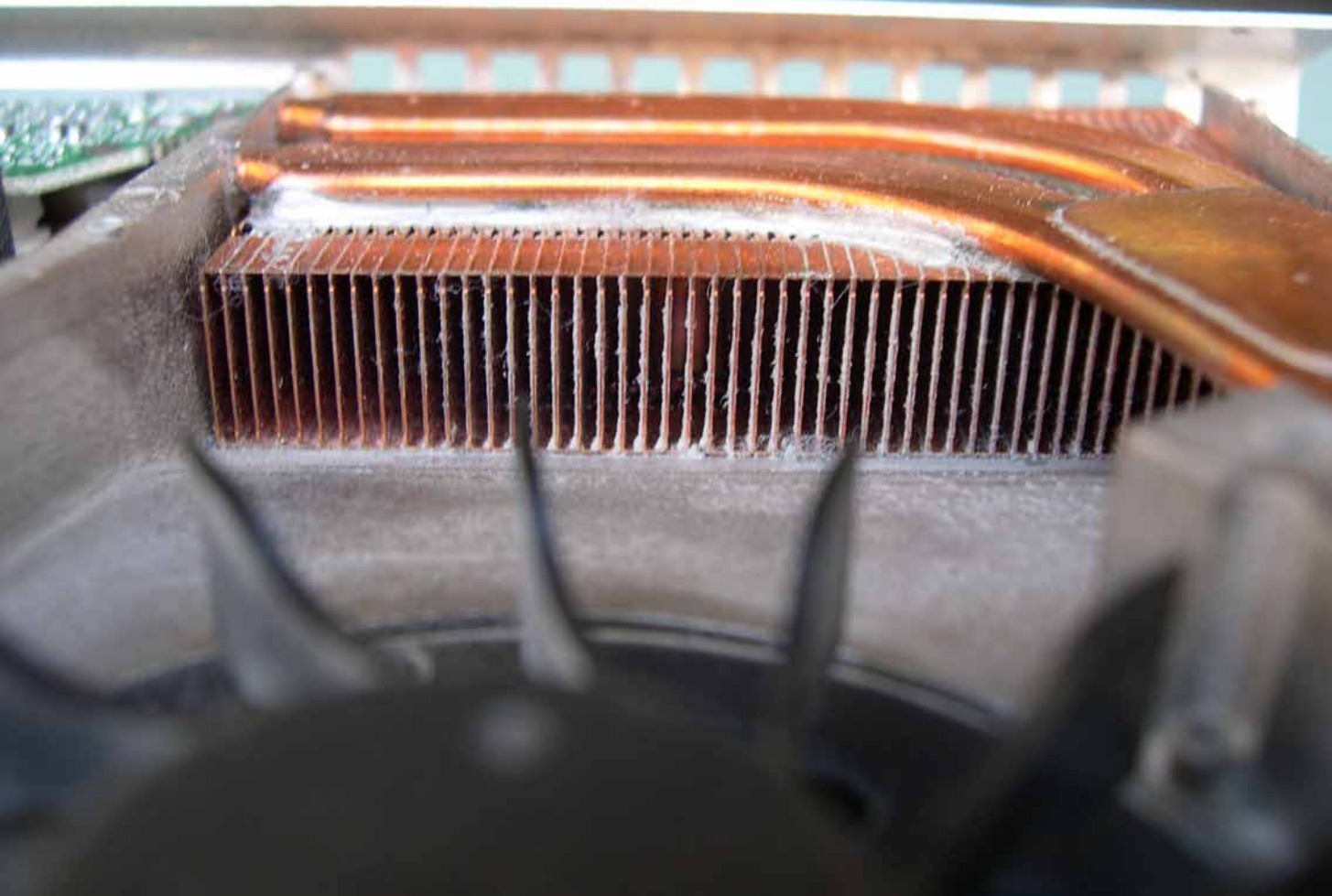


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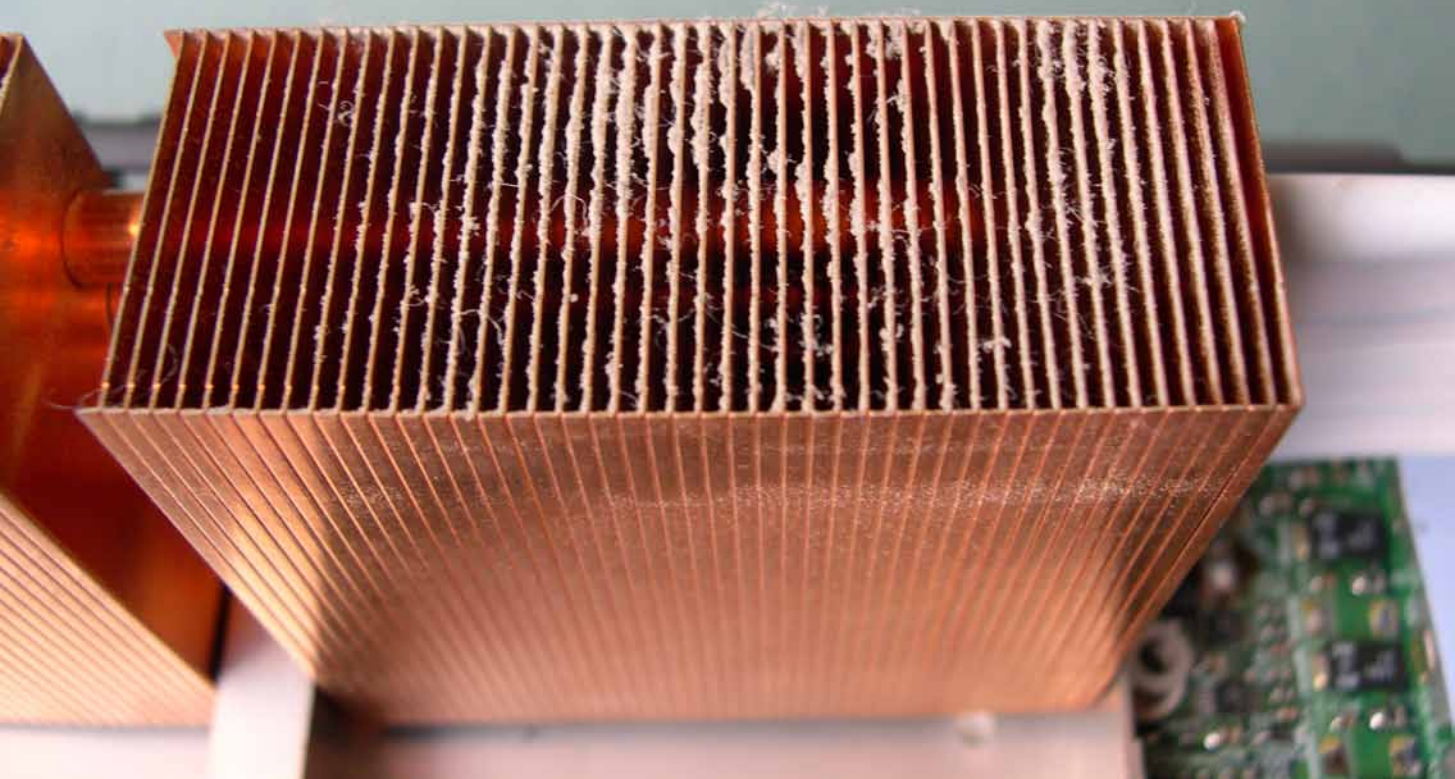


EXHIBIT 7



[Click here](#) to view the demo movie!

Intel® Pentium® Processor

Each and every Area-51m system comes complete with an Intel® Pentium® Desktop Processor. Never before has a full fledged desktop processor been available in a mobile unit!

Unsurpassed Video Performance

What good is mobile gaming with a sub par video chipset? You won't find that here! Each Area-51m system comes equipped with the absolute most advanced graphics chipset available!

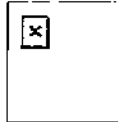


Advanced Cooling Technology

The Area-51m is a powerful machine which requires powerful cooling. All Area-51m systems come with a custom made heat sink specifically designed for high speed processors. Sticking with Alienware® tradition, each unit is packed full of fans and exhaust units to ensure optimum performance.



[Click here](#) to learn more.



Can a gaming system be used for other tasks?

Yes. A computer system built for gaming must contain the best and highest performing components to keep up with the demands of modern games.

[Click here](#) to learn more.

Finance Your Purchase!

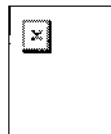
Alienware® is now offering customers the option to finance their purchase of the new Alienware Credit Card. You may request an application by mail or phone and receive instant approval if qualified.

[Click here](#) to learn more.



"The Alienware Area-51m is a notebook PC for people who take their games seriously."

[Click here](#) to read the review!



"I've seen the future of notebooks, and Alienware is leading the way."

[Click here](#) to read the review!



"Put the Area-51m notebook at the top of your list."

[Click here](#) to read the review!



To place an order by phone please call **1-800-ALIENWARE**
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Alienware

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*"The truth
- S*

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The Alienware® Area-51m system is the first mobile gaming machine (highest level user in mind. This conveniently compact unit eliminates task of transporting your entire desktop system including case, keyboard, speakers, etc. From LAN parties to business meetings to classroom lectures can go virtually anywhere. The Area-51m is the Ultimate Mobile Gaming Machine.

This package is available as is for the price listed above, or you also have the option of customizing it to meet your existing needs/wants. See for yourself what you can do!

☐

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Microsoft® Windows® XP Professional
High-Performance Chassis
Pentium® 4 @ 3.06GHz
1024MB DDR SDRAM
ATI Mobility RADEON 9000
15.0" inch UXGA LCD Screen
60GB **7200 RPM** with 8MB Cache

Price: \$3,092.00
Before all applicable rebates.

Customize

Microsoft® Windows® XP Home Edition
High-Performance Chassis
Pentium® 4 @ 2.8GHz
512MB DDR SDRAM
ATI Mobility RADEON 9000
15.0" inch UXGA LCD Screen
60GB **7200 RPM** with 8MB Cache

Price: \$2,628.00
Before all applicable rebates.

Customize

Microsoft® Windows® XP Home Edition
High-Performance Chassis
Pentium® 4 @ 2.66GHz
512MB DDR SDRAM
ATI Mobility RADEON 9000
15.0" inch UXGA LCD Screen
40GB **5400 RPM** ATA100

Price: \$2,243.00
Before all applicable rebates.

Customize

☐ The Alienware Difference

☐ View All colors



How can I get the best insurance for my system?

To obtain the highest level of service and support select the extended warranty. This package ensures that you will receive the most secure protection on your investment.

EXHIBIT 8

III EMPIRE EARTH



Alienware recommends
Microsoft® Windows® XP Professional.

WIN AN ALIENWARE AREA-51™ 5550 ULTIMATE GAMING MACHINE

Custom-built and optimized for high-performance PC gaming, Alienware systems deliver unrivaled performance with the highest detail possible and ultra smooth gameplay. Incorporating state-of-the-art components, innovative engineering and design, and providing unprecedented customer service, Alienware systems offer the ultimate gaming experience. Immerse yourself in a new level of realism, whether you are defeating evil enemies, building your own empire, or conquering new worlds online. PC games **Play Best On Alienware.**

Enter code: EEAD to win an Alienware Area-51 at:
WWW.ALIENWARE.COM/EEAD
or contact us direct at: 1-800-ALIENWARE

PLAYS BEST ON
ALIENWARE 

EXHIBIT 9

ALIENWARE SYSTEMS PRICED BELOW OFFERINGS FROM DELL AND HP

Alienware Delivers High-Performance Systems at Affordable Price Points for Consumers and Corporations Alike

MIAMI, FL – December 8, 2004 - Alienware®, the leading manufacturer of high-performance desktop, notebook, media center, and professional workstations, offers high-performance systems at prices more affordable than comparable systems from Dell and HP. Due to Alienware's continuing growth, and the resulting economies of scale, the company is able to pass along significant savings to both consumers and corporate customers.

Alienware is currently offering exciting incentives on numerous Alienware systems, including its entire line of desktop computers. Similar savings are available on other innovative systems such as Sentia™ notebooks and DHS™ media center systems through rebates of up to \$250 plus free shipping. Alienware has also introduced a number of powerful new systems at attractive price points, among them the Area-51m 7700 mobile desktop and the DVD player sized DHS 2 Series media center.

"Alienware has long been known for cutting-edge performance and highly dedicated customer support, and now we are able to deliver these premium products to customers at unbeatable values," said Robert Lusk, vice president of sales and marketing for Alienware. "With Alienware's new impressively low price points, any perceived advantage of buying from another system manufacturer has disappeared."

About Alienware

Alienware manufactures high-performance desktop, notebook, and media center systems and leading-edge professional workstations. Alienware offers unique and award-winning products that incorporate state-of-the-art components, innovative engineering and design, and unprecedented customer service. Alienware systems are available direct within the United States and Europe. For more information, please visit www.alienware.com/prprice or call 1-800-ALIENWARE (254-3692).

###

Alienware Contact:

Jadyn Gonzalez
Public Relations Specialist
jadyn_gonzalez@alienware.com
(305) 251-9797

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ALIENWARE AREA-51M 7700 MOBILE DESKTOP NOW FEATURES WINDOWS MEDIA CENTER EDITION 2005

Area-51m 7700 Performs as Both an Entertainment Center and a Cutting-Edge Desktop in a Portable System

MIAMI, FL – July 7, 2005 - Alienware®, the leading manufacturer of high-performance desktop, notebook, media center and professional computing systems, announced that the award-winning Alienware Area-51m 7700 mobile desktop is now available with the Microsoft Windows XP Media Center Edition 2005 operating system. Powered by Windows XP technology, the Area-51m 7700 gives customers a mobile solution for all their entertainment and computing needs without sacrificing any of the power of today's most advanced desktops.

Area-51m 7700 mobile desktops featuring Windows XP Media Center Edition 2005 include dual-tuner support and deliver the options and features of a DVD player, DVR, FM tuner, CD jukebox, and more. Supplying the most storage of any media center in a portable system, the Area-51m 7700 provides travelers, gamers, college students, military personnel, and other mobile users the perfect way to enjoy all of their media wherever they need to go. The Area-51m 7700 also comes equipped with a Windows XP Media Center Edition remote control, IR receiver, and PCMCIA TV tuner to further enhance the mobile entertainment experience.

"Alienware introduced the Area-51m 7700 mobile desktop just a few months ago and it has already received an overwhelmingly positive response from customers and media members alike," said Patrick Cooper, director of product management for Alienware. "With the addition of Windows XP Media Center Edition 2005, the Area-51m 7700 now stands poised to garner further acclaim as the system of choice for anyone desiring easy mobile access to all their entertainment."

Having recently earned an Editors' Choice Award from *PC Gamer* magazine, the Area-51m 7700 packs desktop power into a portable platform with features like the Intel® Pentium® 4 desktop processor with 1MB of cache, next-generation PCI Express technology, and expansion for up to 4 GB of DDR2 memory. Area-51m 7700 users will also benefit from NVIDIA® GeForce™ Go 6800 graphics and a 17" widescreen SXGA+ LCD display that serve as the ideal complements for Windows XP Media Center Edition 2005.

"Windows XP Media Center Edition 2005 provides our customers a wide range of complete, connected entertainment experiences, whether at home or on the go" said Bill Mannion, director of Windows Consumer Marketing at Microsoft Corp. "With a Windows XP Media Center Edition 2005 powered Area-51m 7700 mobile desktop, our mutual customers can be assured of the seamless and innovative digital entertainment experiences regardless of their location."

About Alienware

Alienware manufactures high-performance desktop, notebook, and media center systems and leading-edge professional systems. Alienware offers unique and award-winning products that incorporate state-of-the-art components, innovative engineering and design, and unprecedented customer service. Alienware systems are available direct within the United States, Europe, Australia and New Zealand, and will soon be offered in other locations around the Pacific Rim. For more information, please visit www.alienware.com/mce7700 or call 1-800-ALIENWARE (254-3692).

###

Alienware Contact:

Jaclyn Gonzalez
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San Francisco, CA 94117

October 4, 2006

CERTIFIED MAIL -
RETURN RECEIPT REQUESTED
Alienware Corporate Headquarters
14591 SW 120 ST
Miami, FL 33186-8638

Re: **NOTIFICATION PRIOR TO COMMENCEMENT OF ACTION PURSUANT
TO THE CALIFORNIA CONSUMERS LEGAL REMEDIES ACT**

Dear Alienware:

My name is Harry Oestreicher and I purchased a defective Area 51 notebook computer in California on June 30, 2005. I am sending this letter pursuant to California *Civil Code* § 1782.

Alienware advertises these notebook computers as being (*inter alia*) "of the absolute highest quality" and claims "every detail of an Alienware product is carefully scrutinized and perfected."

However, my Area 51 notebook computer and like models, including the 5550, 5700, 5750, 7500 and 7700 notebook computers are defectively designed and overheat during normal usage. Alienware's representations of quality violate California *Civil Code* § 1770, subds. (5), (7) and (9) in the following respects:

Under subsection (5), Alienware has represented that the Area 51 notebook computer has characteristics and benefits it does not have;

Under subsection (5), Alienware has represented that the Area 51 notebook computer is of a particular standard when it is not; and

Under subsection (9), Alienware has advertised the Area 51 notebook computer with an intent not to sell it as advertised.

Pursuant to California *Civil Code* § 1782, this letter serves as notification of Alienware's alleged violations of section 1770 and my demand that Alienware correct, repair, replace, or otherwise rectify the overheating problem in the aforementioned Area 51 notebook computers. Specifically, I request that Alienware recall the aforementioned Area 51 notebook computers and

Alienware Corporate Headquarters
October 4, 2006
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refund all purchasers of the notebook computers the purchase prices, plus interest. In the alternative, at the election of the purchasers, I request that Alienware fix the overheating problems at no cost to the purchasers and compensate those consumers for the loss of use of the product. In addition, I request that all purchasers of the Area 51 notebook computers be reimbursed for any sums they paid for repair of those products. Finally, I requests that Alienware cease its misleading and false advertising practices in connection with these products in whatever context it occurs.

If Alienware fails to respond to this demand within 30 days receipt of this letter, pursuant to section 1782, I will instruct my legal counsel to institute an action in California requesting actual damages, plus punitive damages, interest, attorneys' fees and costs for Alienware's violations of California *Civil Code* § 1770.

In closing, I request that all correspondence to me regarding this matter be copied to my attorneys at the following addresses:

David P. Meyer, Esq.
David P. Meyer & Associates., Co. LPA
1320 Dublin Road, Suite 100
Columbus, Ohio 43215

Michael L. Kelly, Esq.
Kirtland & Packard LLP
2361 Rosecrans Avenue, 4th Floor
El Segundo, CA 90245

Sincerely,



Harry Oestreich

CC: David P. Meyer, Esq.
Michael L. Kelly, Esq.

EXHIBIT 11

From: James Espinosa <james_espinosa@alienware.com>

Date: Oct 11, 2006 2:58 PM

Subject: HARRY OESTREICHER, JR. ; Account 322125

To: harryo1968@gmail.com

Greetings,

I am from Alienware's Critical Issues Team located in our Miami, FL headquarters. It has been brought to my attention that you have been experiencing overheating issues with your Alienware laptop. I would like to apologize for any inconvenience this may have caused.

We can gladly arrange a depot repair to have your computer diagnosed and repaired in our Miami facilities. Of course, we would offer expedited service, as well as shipping to and from our facilities. However, as you are currently out of warranty, any parts that are replaced will need to be paid for at your expense. I can provide a 10% discount towards the purchase of replaced parts, as well as waived shipping to and from our facilities.

Please, feel free to contact me at your earliest convenience and we can arrange this together.

Thank you,

James Espinoza

Critical Issues Technical Agent

Alienware Corporation

Phone: 305.251.9797 x2783

Fax: 786.388.5719

www.alienware.com

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